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OFFICE OF THE MAYOR  
SAN FRANCISCO



WILLIE LEWIS BROWN, JR.

REASURE ISLAND PROJECT  
410 AVENUE OF THE PALMS  
BUILDING 1, 2ND FLOOR  
TREASURE ISLAND  
SAN FRANCISCO, CA 94130  
(415) 274-0660  
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TREASURE ISLAND DEVELOPMENT AUTHORITY

MEETING AGENDA

Wednesday, April 11, 2001 1 P.M.

Room 400, City Hall  
1 Dr. Carlton Goodlett Place

Willie L. Brown, Jr., Mayor

DIRECTORS

John Elberling, Vice-Chairman  
William Fazande  
Susan Po-Rufino  
Doug Wong

Gerald Green  
Anne Halsted  
James Morales

Annemarie Conroy, Executive Director  
London Breed, Commission Secretary

ORDER OF BUSINESS

1. Call to Order, and Roll Call
2. Approval of Minutes (*Action Item*)
3. Communications (*Discussion Item*)
4. Report of the Treasure Island Project Director Annemarie Conroy (*Discussion Item*)
  - Report on access to Treasure Island including public use last month
  - Status of environmental clean up
  - Report on short-term leases
  - Report on San Francisco-Oakland Bay Bridge/Caltrans issues
  - Report on Treasure Island community issues
  - Report on Citizens Advisory Board
  - Report on TIHDI
  - Financial Report
  - Legislation/hearings affecting Treasure Island
5. General Public Comment (*Discussion Item*)
6. Ongoing Business by Directors and Introduction of New Business by members (*Discussion Item*)
7. Resolution approving a sublease as amended with the San Francisco Sheriff's Department for the Brig Facility (*Action Item*)
8. Authorizing the Executive Director to execute a contract with Rubicon Enterprises, Inc, a member organization of the Treasure Island Homeless Development Initiative, to provide landscaping and grounds maintenance services for an amount not to exceed \$600,000 (*Action Item*)

9. Resolution authorizing the Executive Director to extend the sublease with Mr. Rex Liu for the Photo Booth on a month-to-month basis not to exceed one year (*Action Item*)
10. Report on the Amendment to the John Stewart Sublease to Include Licensed Health Care Professionals in the San Francisco Essential Preference Group (*Discussion Item*)
11. A Resolution Approving the Budget of the Treasure Island Development Authority for Fiscal Year 2001 – 2001, and Authorizing the Executive Director to Submit the Proposed Budget to the Mayor of the City and County of San Francisco For Further Review and Inclusion in the City's FY 2001-2002 Budget (*Action Item*)
12. A Resolution authorizing the Executive Director to accept and enter into a Grant Agreement for \$879,000 from the Federal Highway Administration Ferry Boat Discretionary Fund for the Planning and Construction of a Temporary Ferry Terminal on Treasure Island (*Action Item*)
13. Adjourn

*Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Project Office and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.*

#### **MEETING AGENDAS NOW AVAILABLE ON E-MAIL**

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#### **TREASURE ISLAND WEBSITE**

Check out the Treasure Island website at [www.ci.sf.ca.us/treasureisland](http://www.ci.sf.ca.us/treasureisland) to find out about activities and facilities on Treasure Island, special events venues for rent, or to review the Treasure Island Development Authority's agendas and minutes.









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**Minutes of Special Meeting  
Treasure Island Development Authority  
March 29, 2001**

1. Call to Order: 9:07 AM in Room 400 in City Hall

Roll Call	Present:	John Elberling, Vice-Chairman
		William Fazande
		Susan Po-Rufino
		Doug Wong
		Anne Halsted
		James Morales (9:10 AM)
		Gerald Green (9:15 AM)

Ms. Halsted stated she has resigned due to a new position at BCDC, which is in conflict with her TIDA role.  
Ms. Halsted thanks the commissioners and wishes them the best.

2. Approval of Minutes: The minutes of February 14, 2001 were approved 6-0
3. Communications: London Breed, Commission Secretary, reported that there were no communications.
4. Director's Report given by Annemarie Conroy, Executive Director for TIDA.

Public Access - Ms. Conroy reports that there are 65 weddings and 35 private parties scheduled this year, including Golden Gate Women's Soccer, Berkeley All Blues Women's Rugby. The Armenian National Committee is holding annual dinner, SF Art Institute is holding a fundraiser in Bldg. 1 in March and the Mayor's Office continues to facilitate senior bus tours.

Environmental Cleanup - Ms. Conroy stated that the project office continues to work with the Navy and DTSC to release units for TIHDI and John Stewart Company. She reports there is \$30 million in the upcoming budget from the US Dept. of Defense for TI environmental cleanup.

Short Term Leases - Ms. Conroy stated that there are no new short-term leases.

Bay Bridge - Ms. Conroy reported that San Francisco Mayor Gavin Newsom has called for a hearing on whether the eastern span should be retrofitted or replaced due to the increased \$1 billion in costs.

Treasure Island Community - Ms. Conroy stated that the Villages have approved rooftop installation of wireless services for residents. Job Corps is going to open a small grocery store that will be available to Island residents. Ms. Conroy reported that there is an increase in Muni services on Treasure Island and an increase in police presence on the buses. New buses coming on line will have cameras and will be assigned to the 108 line.

Citizen Advisory Board - Ms. Conroy introduces Karen Knowles-Pierce, chair of the Citizen Advisory Board.

TIHDI - Ms. Conroy reports that Mr. & Mrs. John Stewart, of the John Stewart Company, and Bob Mahoney, TIDA Deputy Director will be honored at TIHDI's annual fundraiser April 26<sup>th</sup>.

Finance Report - Ms. Conroy introduces Eila Arbuckle, Director of Finance. Ms. Arbuckle reported on the current budget stating that we are on target for this year. We have two classes of revenues: non-city departments and city departments. Ms. Arbuckle will present a proposed budget for next year at the next Authority meeting.

Legislation/Hearings Affecting TI: Ms. Conroy reported that Chris Daly, District 6 Supervisor, has called a hearing on the implementation of Prop. K and has asked for information on the amount of funds & staff resources expended on the RFQ process. The Board of Supervisors approved the Cooperative Agreement with the Navy on March 26, 2001. The sublease with the Sheriff for the Brig will go before the Board of Supervisors on Monday, April 9, 2001.

Mr. Green moved to call item 16 out of order. Ms. Po-Rufino seconded. Approved 6-0

16. A resolution approving a gift in honor of Robert Mahoney, Deputy Director and Facilities Manager, from the John Stewart Company for a landscaping project on the perimeter path.

Ms. Conroy speaks of Bob's contributions and dedication to the Island, the community and the Project and pays tribute to his character. She introduces John Stewart of the John Stewart Company. Mr. Stewart reports on the Friends of Bob Mahoney Fund that he has set up and also pays tribute to all of the work Bob has done for the Island and the Project. He states the project will be a cityscape view sitting area. We hope to have the project done by the April 26<sup>th</sup>.

Ms. Sherry Williams, Executive Director of TIHDI, pays tribute to Bob also for all his efforts to help TIHDI get off the ground. The Mayor will hand the awards out on the fundraiser on the 26<sup>th</sup>. Walter Park, Mayor's Office on Disability, praises Bob for his hard work and integrity. Ms. Halsted expressed her appreciation for the work that Bob Mahoney has done for the Authority. Noah Griffin recites a poem in honor of Bob Mahoney.

Mr. Wong moved approval. Mr. Green seconded. Approved 6-0

5. General Public Comment – No General public comment.

6. Ongoing Business by Directors and Introduction of New Business by members:

Mr. Elberling inquired about the status of the RFQ.

Mr. Proud reported that consultant responses were received on February 21 and a review committee was convened. Mr. Green expressed concern over whether we have looked at all the alternatives. Mr. Cohen states an extensive discussion about the RFQ is not permitted under the Sunshine Ordinance since this topic is not listed as a separate agenda item.

Mr. Wong moved for a closed session to discuss the RFQ at the next TIDA meeting. Mr. Green seconded. Approved 6-0

7. A resolution approving a Contract with URS for \$300,000 to prepare a programmatic Environmental Impact Report for former Naval Station Treasure Island.

Mr. Proud stated that the conveyance with the Navy and TIDA requires 2 environmental actions to occur. 1) The U.S. government has to satisfy NEPA and prepare an environmental impact statement. 2) A document complying with CEQA must be prepared to transfer the property from the Navy. A combined NEPA/CEQA did not work, therefore the Navy will satisfy NEPA and the Authority will satisfy CEQA. The programmatic EIR is intended to accomplish several things. 1) Facilitate conveyance from the Navy to the Authority; 2) to allow for Marina expansion; 3) Adopt a preliminary development plan; 4) Seek grant funds for causeway upgrade; and 5) Planning and implementing a ferry landing. The selection committee picked URS from three responses. The consultant will review the preliminary EIR, execute corrections, and prepare a new draft EIR that leads to a final EIR for the conveyance of Treasure Island. The work schedule is 15 months, which would lead to the final EIR in the spring of 2002.

Mr. Elberling expressed concerns about the scope of work.

Denise Herck from URS stated that the alternatives contained in the Navy's draft would be the same ones we would carry through. Mr. Elberling asked if it would be appropriate to bring it up on calendar at a future date. Discussion follows regarding the revisiting of alternatives.

Mr. Green moved approval. Ms. Po-Rufino seconded. Approved 6-0

8. A Resolution accepting five murals by artist Miguel Covarrubias from the 1939 Pan-Pacific Exposition on Treasure Island as gifts from the Port of San Francisco.

Ms. Rummelsburg reports the mural would be stored in Bldg. 449, which is controlled by the Airport Museum. It is a safe place, access and temperature is controlled, and some humidity control. She gives a little history of the murals. They will eventually be exhibited for the public.

Ms. Debra Lehane, Program Director for the Arts Commission, discusses the role of the Arts Commission, i.e., restoration and conservation. MOU with the Authority will be occurring. The Arts Commission is ready to move ahead.

Adriana Williams talks about the importance of the murals.

Luis De La Garza, scholar of Mexican art discusses Covarrubias and the uniqueness of the murals.

Mr. Fazande moved approval. Mr. Green seconded. Approved 6-0

9. A resolution authorizing the Executive director to extend a month-to-month sublease for Building 99 with Island Creative management, Inc.

London Breed, Development Specialist, stated that staff would like the Authority to approve the sublease on the same terms as the original sublease for an additional 1-year term. Beyond Feb. 28, 2002 it would require additional Authority approval.

Mr. Morales moved approval. Mr. Wong seconded. Approves 6-0

10. A resolution authorizing the Executive Director to extend a month-to-month sublease for Bldg. 62 with W. Wong Construction Company, Inc.

Ms. Breed stated that staff would like the Authority to approve this on the same terms as the original sublease for an additional 1-year term.

Mr. Fazande moved approval. Ms. Po-Rufino seconded. Approved 6-0

11. A resolution authorizing the Executive Director to execute an Amendment to the Land and Structures Master Lease with the U.S. Navy to add 35,000 square feet of Paved Property.

Mr. Proud stated that TIHDI requested up to 12,000 square feet of office space to use for TIHDI member organizations. It has been difficult to find space for them. We would lease the area to TIHDI for modular offices and training facilities. They will landscape the area.

Sherry Williams, TIHDI, stated the land is needed for increasing support service needs.

Jim Fagler discusses the design and Laura Weir discusses support services. Nella Gonzalez from Catholic Charities discusses services they provide to 64 families.

Mr. Fazande moved approval. Mr. Morales seconded. Approved 6-0

12. A resolution authorizing the Executive Director to execute a sublease with TIHDI for 35,000 square feet of paved property.

Mr. Morales approval. Ms. Po-Rufino seconded. Approved 6-0

13. A resolution authorizing the Executive Director to execute a Contract with Toolworks, Inc. a

member organization of the Treasure Island Homeless Development Initiative, and a California Public Benefit Corporation, for an amount not to exceed \$125,000 to provide janitorial and other building services for the period of March 2001 through February 2002.

Ms. Arbuckle stated that Toolworks has been providing services janitorial services for Bldg. 1 and the event venues for the past three years. She describes the scope of their duties.

Ms Donna Feingold discusses the purpose of Toolworks and thanks everyone for the support.

Mr. Morales moved approval. Mr. Wong seconded. Approved 6-0

14. A resolution authorizing an amendment to the sublease with the John Stewart Company to expand the "San Francisco Essentials" preference category to include licensed health care professionals.

Mr. Proud stated that on March 17, 1999 the Authority entered into a sublease with JSCo for 766 housing units on TI. On February 23, 2001, we received a request from the Hospital Council of Northern and Central California to expand the 35% preference category for essential personnel to include certified or licensed hospital personnel. We also received a request from Supervisor Daly to include licensed personnel. JSCO is willing to amend the sublease to add such qualified personnel. He discusses examples of qualified licensed medical personnel.

Discussion of the definition of licensed health care professionals' follows.

Mr. Elberling asked for a report breaking down how the 35% allotment has been used and indicating the number of children to be presented in the future.

Mr. Cohen, City Attorney, commented that only 1 of every 3 turnover units would be offered for the first refusal category.

Mr. Fazande moved approved. Mr. Wong seconded. Approved 6-0

15. A resolution authorizing the Executive Director to execute a contract with Rubicon Enterprises, Inc., a member organization of the Treasure island Homeless Development Initiative, to provide landscaping and grounds maintenance services for an amount not to exceed \$600,000 and we ask that this item be continued to the next meeting.

London Breed, Commission Secretary, reported that staff recommends continuation of this item until the next meeting.

Mr. Wong moved to continue Item 15. Ms. Po-Rufino seconded. Approved 6-0

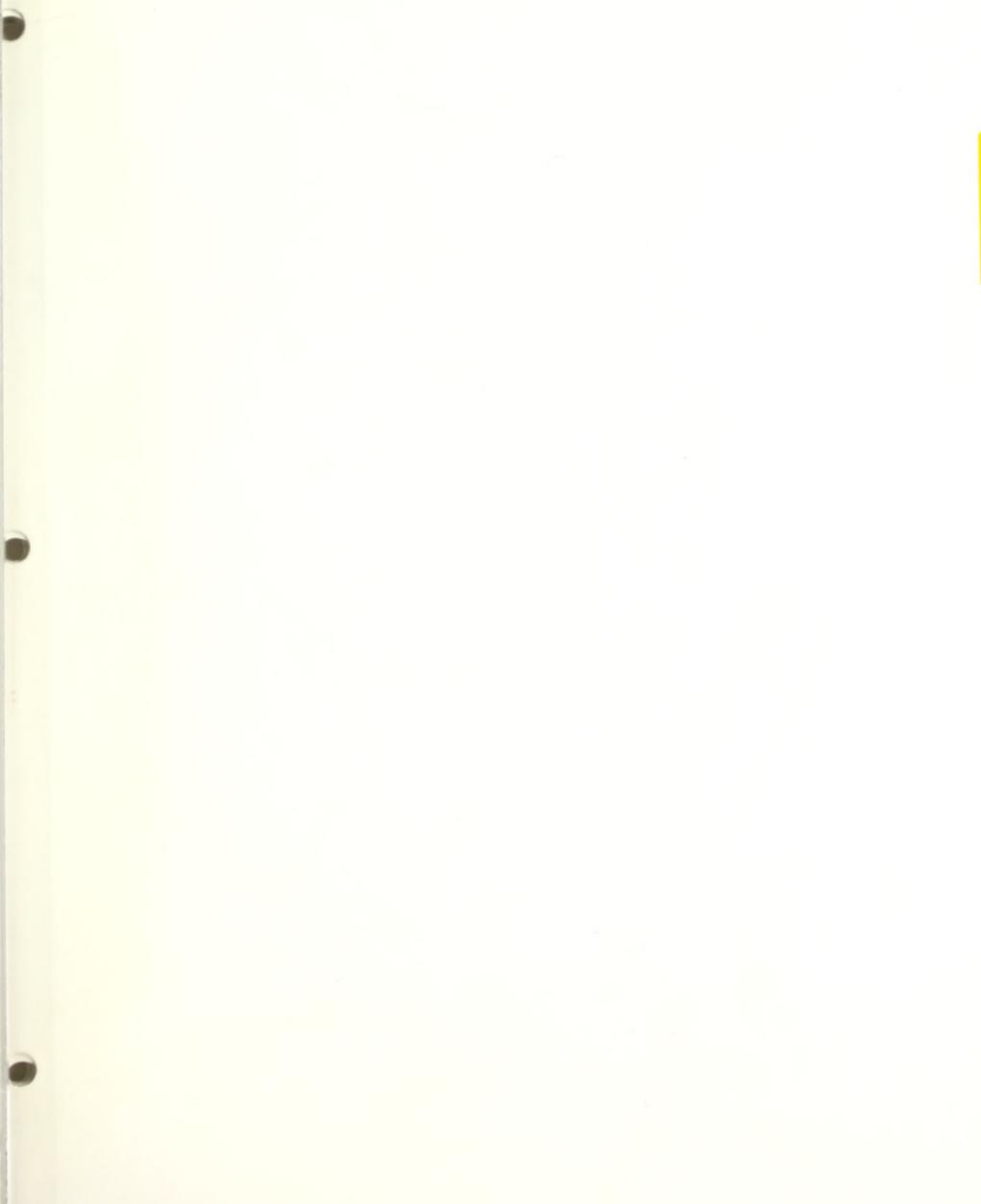
17. Meeting adjourned at 11:06.A.M.



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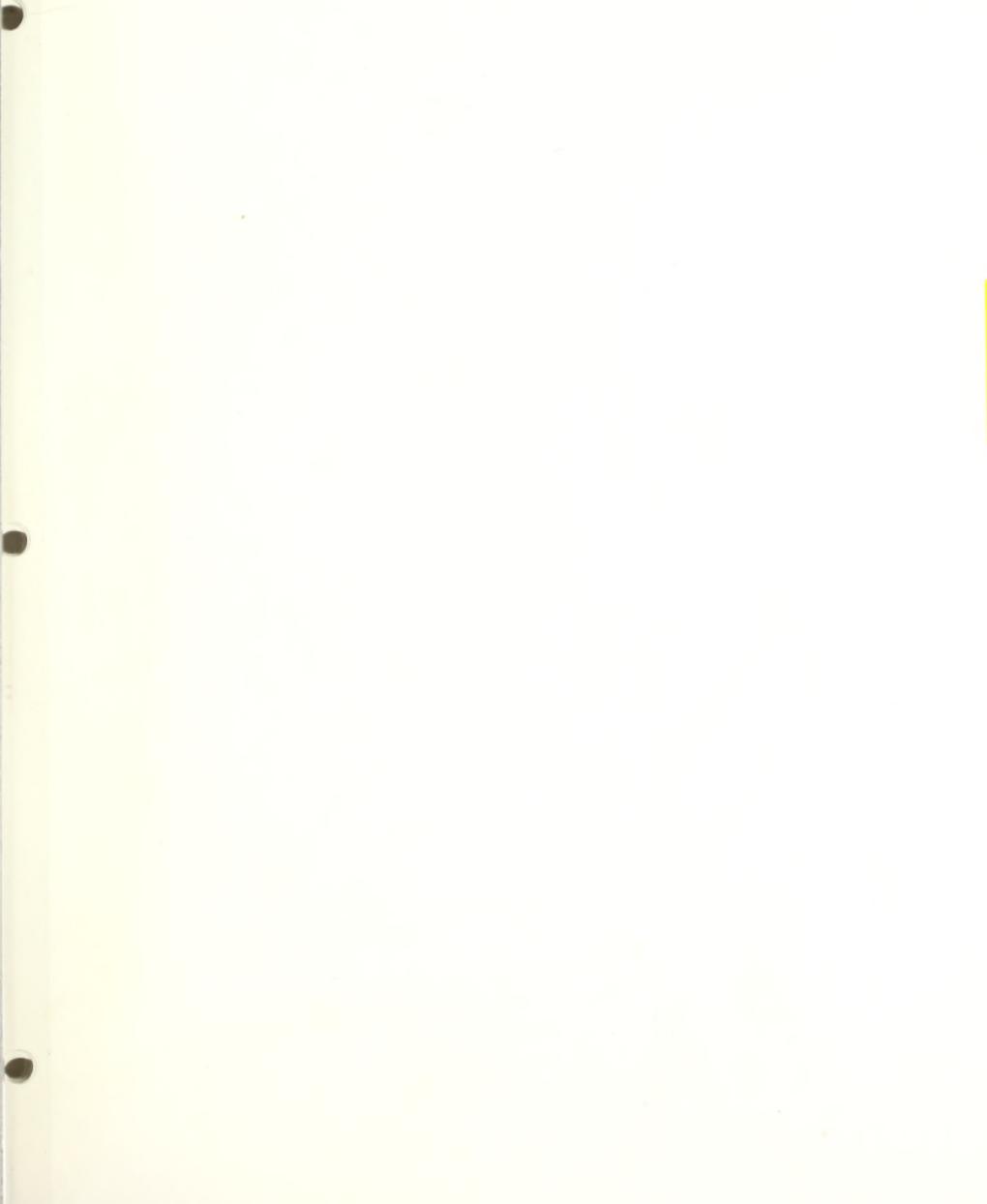
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**AGENDA ITEM**  
**Treasure Island Development Authority**  
**City and County of San Francisco**

**Subject:** Resolution Approving a Sublease as Amended with  
The San Francisco Sheriff's Department for Use of  
Buildings 670 & 671, the Brig, as a Training Facility

Agenda Item No. **7**  
Meeting of April 11, 2001

**Contact/Phone:** Annemarie Conroy, Executive Director  
Stephen Proud, Director of Development  
274-0660

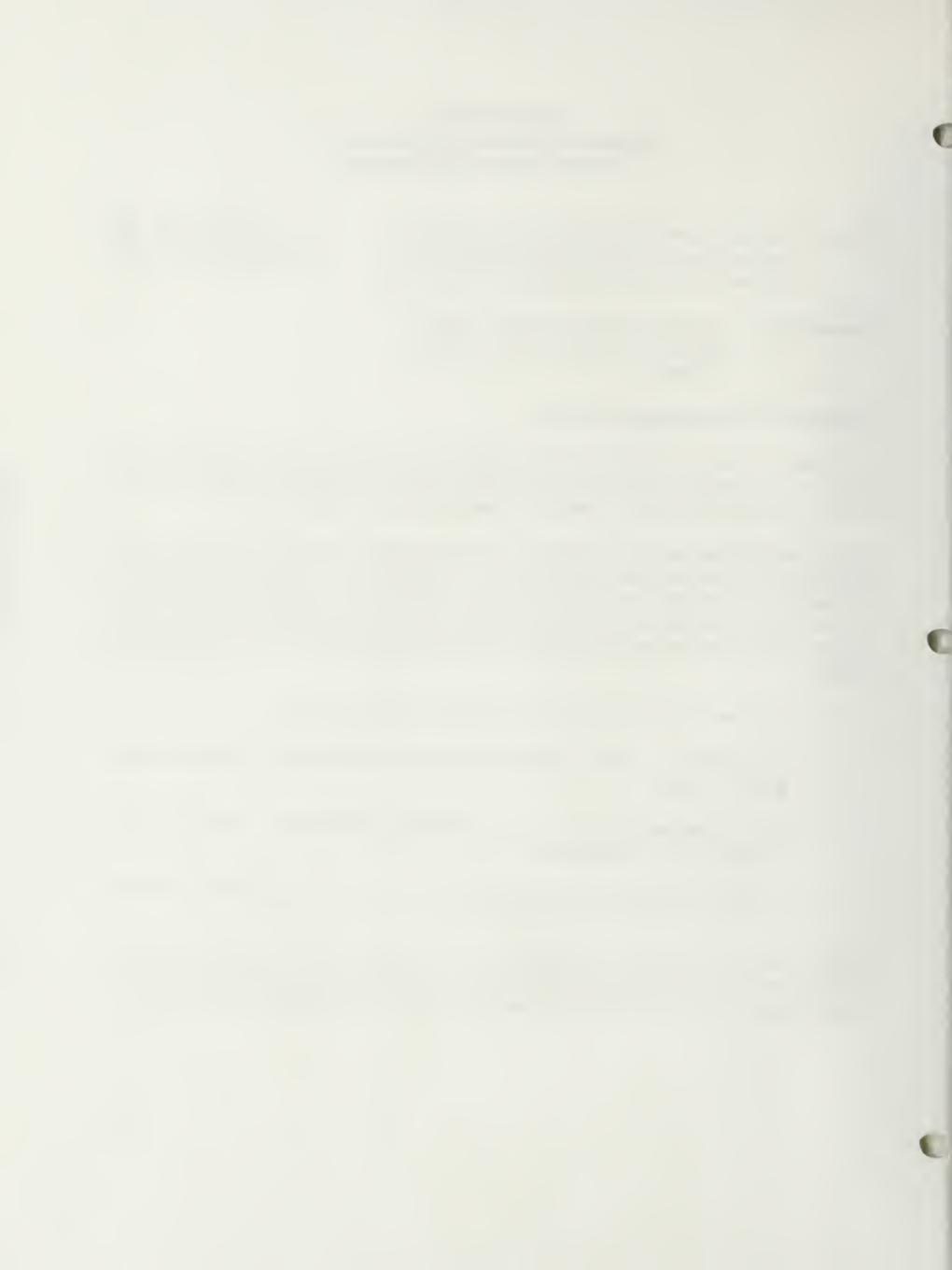
**SUMMARY OF PROPOSED ACTION:**

On October 11, 2000, the Authority adopted resolution to enter into a sublease with the City and County of San Francisco acting by and through the Director of Property on behalf of the San Francisco Sheriff's Department for use of the Brig Facility for a training facility.

The proposed sublease requires the approval of the San Francisco Board of Supervisors and on January 29, 2001, the sublease was introduced to the Board of Supervisors for consideration. The sublease was referred to the Finance Committee of the Board of Supervisors and on March 21, 2001, the item was approved by the Committee and sent back to the full Board for adoption. As part of the Committee approval process, the sublease was amended to include the following changes:

- The term was reduced from a five year term to a two year term;
- The definition for violent offenders was changed to reflect the definition set forth in the Penal Code;
- The termination provision allows for termination of the Sublease on 30-days notice by the Sheriff's Department; and
- Changes for landscaping and utilities will be prorated for the Sheriff if the facility is used for any other purpose such as filming.

Authority staff agrees with the proposed changes to the sublease and is recommending approval of the amended sublease by the Treasure Island Development Authority pending the approval of the San Francisco Board of Supervisors at their regularly scheduled meeting on April 9, 2001.



1 [The Brig Sublease]

2 AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A SUBLEASE AS  
3 AMENDED WITH THE CITY AND COUNTY OF SAN FRANCISCO FOR CERTAIN  
4 PROPERTY ON TREASURE ISLAND COMMONLY KNOWN AS THE BRIG (BUILDINGS  
5 670 & 671) LOCATED AT THE CORNER OF 13<sup>TH</sup> AND M STREETS ON TREASURE  
6 ISLAND, FOR AN ANNUAL RENT OF \$250,000 PER YEAR.

7 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
8 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
9 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority  
10 as a redevelopment agency under California redevelopment law with authority over former  
11 Naval Station Treasure Island (the "Base"), and (ii), with respect to those portions of the Base  
12 which are subject to the public trust for commerce, navigation and fisheries (the "Tidelands  
13 Trust"), vested in the Authority the authority to administer the Tidelands Trust as to such  
14 property; and,

15 WHEREAS, The Tidelands Trust prohibits the sale of Tidelands Trust property into  
16 private ownership, generally requires that Tidelands Trust property be accessible to the public  
17 and encourages public oriented uses of trust property that, among other things, attract people  
18 to the waterfront, promote public recreation, protect habitat and preserve open space; and,

19 WHEREAS, The Board of Supervisors approved the designation of the Authority as a  
20 redevelopment agency with powers over Treasure Island in Resolution No. 43-98, dated  
21 February 6, 1998; and

22 WHEREAS, Under the Act and the Authority's Articles of Incorporation and Bylaws, the  
23 Authority, acting by and through its Board of Directors has the power, subject to applicable  
24 laws, to sell, lease, exchange, transfer, convey or otherwise grant an interest in or right to use  
25 or occupy all or any portion of the real property located on the Base; and,



1           WHEREAS, The City and County of San Francisco (the "City") wishes to sublease  
2 certain property on Treasure Island commonly known as the Brig (Buildings 670 and 671) (the  
3 "Premises") from the Authority for use as a training facility for the City's Sheriff's Department;  
4 and,

5           WHEREAS, The City will only use the Premises for 90 days per year during the term of  
6 the Sublease; and,

7           WHEREAS, The Premises was originally developed by the Navy as a jail for military  
8 purposes and therefor very limited interim reuse potential; and

9           WHEREAS, Allowing the City to use the Premises as a training facility for the City's  
10 Sheriff's Department will serve a public purpose by (i) assisting the City in providing adequate  
11 training facilities for its Sheriff's Department, (ii) providing additional visible law enforcement  
12 presence on Treasure Island, and (iii) allowing for the interim reuse of a very limited purpose  
13 building on Treasure Island; and

14           WHEREAS, Staff has determined that a reasonable value for the use of the Premises  
15 (given its limited reuse potential) for only 90 days per year is \$250,000; and,

16           WHEREAS, The proposed sublease involves the reuse of existing buildings and  
17 facilities; and

18           WHEREAS, On November 3, 1997 the Planning Department of the City and County of  
19 San Francisco determined that such interim reuses as the proposed sublease are  
20 categorically exempt under the California Environmental Quality Act (CEQA) and Sections  
21 15301, 15303, 15304(e), and 15061(b)(3) of the State Guidelines; and

22           WHEREAS, On October 11, 2000, the Treasure Island Development Authority granted  
23 the Executive Director the authority to execute the Sublease with the Sheriff's Department;  
24 and



1           WHEREAS, Execution of the Sublease requires approval from the San Francisco  
2 Board of Supervisors; and

3           WHEREAS, Based on the concerns expressed by the Finance Committee of the San  
4 Francisco Board of Supervisors the Sublease was amended to (i) reduce the term from five  
5 years to three years; (ii) the definition of violent offenders was changed to reflect the definition  
6 set forth in the Penal Code; (iii) the termination provision allows the Sheriff's Department to  
7 terminate the Sublease by providing a 30-day notice to the Authority; and (iv) the Authority  
8 agrees to prorate the costs of utilities and landscaping during times the Brig my be used by  
9 other parties, such as film studios; and

10          WHEREAS, the Sublease as amended was approved by the Finance Committee of the  
11 San Francisco Board of Supervisors on March 21, 2001;

12          WHEREAS, On April 9, 2001, the Sublease as amended was approved by the San  
13 Francisco Board of Supervisors; and

14          WHEREAS, A copy of the proposed sublease with the City for the Brig is attached to  
15 this Resolution as Exhibit A; now therefore, be it

16          RESOLVED: That the Board of Directors hereby authorizes the Executive Director or  
17 her designee to enter into the Sublease as amended with the City and County of San  
18 Francisco for the Premises for use as a training facility for 90 days per year for a rental  
19 amount of \$250,000 per year; and be it

20          FURTHER RESOLVED: That the sublease between the City and the Authority shall be  
21 in substantially the form of the Sublease attached hereto as Exhibit A; and be it

22          FURTHER RESOLVED: That the Executive Director is hereby authorized to take any  
23 and all actions deemed necessary by the Executive Director in consultation with the City  
24 Attorney's Office to carry out the intent of this resolution, including without limitation, the  
25 amendment of any leases with the Navy.



## **CERTIFICATE OF SECRETARY**

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors and a properly noticed meeting on April 11, 2001.

**John Elberling, Secretary**



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**INTERIM SUBLEASE**

**between**

**THE TREASURE ISLAND DEVELOPMENT AUTHORITY**

**as Sublandlord**

**and**

**CITY AND COUNTY OF SAN FRANCISCO**

**as Subtenant**

**For the Interim Sublease of**

**The Brig at former Naval Station Treasure Island  
San Francisco, California**

\_\_\_\_\_, 2000



## TREASURE ISLAND SUBLICENSE

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**LIST OF EXHIBITS:**

EXHIBIT A - Master Lease

EXHIBITS B - Drawing of Premises

EXHIBIT C - Seismic Report

EXHIBIT D - Management Plan

EXHIBIT E - Emergency/Contingency Plan

EXHIBIT F - List of Prior Improvements Installed

EXHIBIT G - List of Additional Improvements to be Installed

EXHIBIT H - List of Personal Property

## TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated as of July 1, 2000, is by and between the Treasure Island Development Authority ("Sublandlord") and the CITY AND COUNTY OF SAN FRANCISCO ("Subtenant"), acting by and through its Director of Property on behalf of the Sheriff's Department. From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

- A. Pursuant to that certain Police Academy/Sheriff Master Lease (the "MasterLease"), by and between the Authority and the Department of Navy (the "Navy"), dated April 5, 1999, a copy of which is attached hereto as Exhibit A, the Authority has the right to use those portions of Naval Station Treasure Island commonly referred to as the Brig facility (and sometimes referred to as Buildings 670 and 671, respectively) and more particularly shown on Exhibit B hereto (the "Premises")
- B. Subtenant desires to sublet all of the Premises from Sublandlord and Sublandlord is willing to sublet the Premises to Subtenant on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

### 1. PREMISES

1.1. ~~Subleased Premises~~. Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises, including the improvements thereon.

#### 1.2. As Is Condition of Premises.

(a) Inspection of Premises. Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them, ("Subtenant's Agents") of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are useable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic Report referenced in Section 1.2(c) below and the Joint Inspection Report referenced in Section 6 of the Master Lease.

(b) As Is; Disclaimer of Representations. Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL

FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises governing the use, occupancy, management, operation and possession of the Premises (together, "Laws"). Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord nor any of its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below) (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use of Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or sub-subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

Notwithstanding the foregoing, Sublandlord warrants its authority to enter into this Sublease.

**(c) Seismic Report and Structural Report.** Without limiting Section 1.2

(b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions,*" prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco, (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that the Brig and any other structures or improvements located on or about the Premises, may fail structurally and collapse.

## 2. COMPLIANCE WITH MASTER LEASE

**2.1. Incorporation by Reference.** All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein.

**2.2. Conflict.** If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then for purposes of determining the rights and obligations of the Sublandlord and the Subtenant insofar as they relate to one another, the terms of this Sublease shall govern. Any specific references to the applicability of certain provisions of the Master Lease to Subtenant shall not in any way diminish or limit the effectiveness of Subtenant's covenant to generally comply with and perform Lessee's obligations under the Master Lease as provided in Section 2.4 below.

**2.3. Performance of Master Landlord's Obligations.** Sublandlord does not assume the obligations of Master Landlord under the Master Lease. With respect to work, services, repairs, restoration, the provision of utilities, or HVAC services, or the performance of any other obligations required of Master Landlord under the Master Lease, Sublandlord's sole obligation with respect thereto shall be to request the same, on request in writing by Subtenant, and to use reasonable efforts to obtain the same from Master Landlord. Subtenant shall cooperate with Sublandlord as may be required to obtain from Master Landlord any such work, services, repairs, repainting, restoration, the provision of utilities, or HVAC services, or the performance of any of Master Landlord's obligations under the Master Lease.

**2.4. Compliance with Master Lease.** Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord. Sublandlord acknowledges that Subtenant's activities permitted hereunder do not violate the terms of the Master Lease.

**2.5. Automatic Termination.** If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease. The parties hereby acknowledge that the Master Lease is currently scheduled to terminate on April 4, 2004. Sublandlord hereby covenants to use good faith efforts to seek an extension of the Master Lease or other acquisition of the Premises from Master Landlord to enable the parties to complete the Term of this Sublease. Sublandlord further covenants to use good faith efforts to obtain Master Landlord's consent to this Sublease.

### 3. TERM

**3.1. Term of Sublease.** The Premises are subleased for a term (the "Term") commencing on the date which is the later of the date upon which (i) the City's Mayor and Board of Supervisors shall have approved the transaction contemplated by this Sublease, in their respective sole and absolute discretion, (ii) Sublandlord's Board of Directors adopts a resolution approving this Sublease, (iii) the Parties hereto have duly executed and delivered this Sublease, and (iv) Master Landlord has approved this Sublease (collectively, the "Commencement Date") and expiring on May 15/June 30, 2005 (the "Expiration Date"), subject to Section 2.5 above and unless sooner terminated pursuant to the terms of this Sublease.

**3.2. Effective Date.** The parties hereby agree that the effective date of this Sublease shall be July 1, 2000 (the "Effective Date").

**3.3 Early Termination Without Cause.** Either party may terminate this Sublease prior to the Expiration Date by giving to the other party written notice of intent to terminate the Sublease one year prior to the intended date of termination. Once such a notice of termination is received by one of the parties, the other party may not revoke the notice without the consent

### 4. RENT

**4.1. Annual Base Rent.** Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord Two Hundred Fifty Thousand Dollars (\$250,000.00) per year (the "Base Rent"). Base Rent shall be paid to the Sublandlord annually in advance, without prior demand and without any deduction, setoff, or counterclaim whatsoever. The Base Rent shall be payable on the Commencement Date and each annual anniversary of the Effective Date thereafter, in advance, at the Notice Address of Sublandlord provided in Section 21.1 hereof or such other place as Sublandlord may designate in writing. If this Sublease terminates as to all or any portion of the Premises on a date other than a date which is a full twelve months from the date of the last annual payment of Base Rent, then the Base Rent for such fractional year shall be prorated based on a twelve (12) month, thirty (30) days per month year.

**4.2. Additional Charges.** In addition to Base Rent, Subtenant shall pay any and all costs, impositions and expenses, or charges otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, (i) the common area maintenance charge assessed by the Master Landlord against the Premises in the amount not to exceed Nine Hundred Dollars (\$900) per month (the "Navy CAM Charge"), (ii) landscaping charges associated with the Premises at the rate of Seven Hundred Thirty Five Dollars (\$735.00) per month (the "Landscaping Charge"), and (iii) all late charges and default interest and all utility charges (as set forth in Section 8.2 below) (together, the "Additional Charges"). The Additional Charges shall be payable without set-off or counterclaim. Together, Base Rent and the Additional Charges shall hereinafter be referred to as the "Rent". In the event that Sublandlord enters and uses the Premises or allows any other party to enter and use the Premises pursuant to the provisions of Section 6.3 of this Sublease, the amount of any monthly Navy CAM Charge and/or Landscaping

Charge payable by Subtenant under this Section 4.2 shall be reduced by the prorata number of days of each month that the Premises is not available to Subtenant as a result of any such use.

**4.3. Late Charge.** If Subtenant fails to pay any Rent within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

**4.4. Default Interest.** If any Rent is not paid within thirty (30) days following the due date, such unpaid amount shall bear interest from such date until paid at the rate of ten percent (10%) per year. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

## 5. TAXES, ASSESSMENTS AND OTHER EXPENSES

### 5.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) **Payment Responsibility.** During the Term of this Sublease, Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any improvements to the Premises, Subtenant's personal property, or Subtenant's use of the Premises. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject, however, to Subtenant's right to challenge or protest any of such levies or assessments. Notwithstanding the foregoing, Subtenant shall have the right, at Subtenant's sole cost and expense, to contest the validity of any tax, assessment, excess, license, permit fee or other charge or imposition provided that (i) Subtenant gives Sublandlord written notice of Subtenant's intention to do so at least 10 days prior to delinquency, (ii) Subtenant diligently prosecutes any such contest and at all times effectually stays or prevents any official or judicial foreclosure of the Sublease, and (iii) Subtenant pays any final judgments forcing any such tax, assessment, excise, permit fee or charge so contested. Sublandlord shall, if requested, cooperate with Subtenant at any such proceedings at Subtenant's expense. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums within twenty (20) days after demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Subtenant recognizes that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in any event prior to foreclosure thereof.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may reasonably request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

(e) **Evidence of Payment.** Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof, subject to Subtenant's rights to protest and challenge.

**5.2. Other Expenses.** This is a "triple net" Sublease. Accordingly, Subtenant shall be solely responsible for any and all charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any alterations permitted thereon, including, without limitation, the cost of any utilities (as set forth in Section 8.2 below), repairs, maintenance or services necessary for Subtenant's use.

## 6. USE; COVENANTS TO PROTECT PREMISES

**6.1. Subtenant's Permitted Use.** Except as otherwise provided herein, Subtenant may enter and use the Premises only during those days outlined in the Management Plan attached hereto as Exhibit D (the "Permitted Use Period" or "Permitted Use Periods"). During any Emergency (as defined below), Subtenant may, upon the giving of written notice of an Emergency to the Sublandlord, use the Premises to temporarily house approximately One Hundred (100) nonviolent prisoners for so long as the Emergency exists and for no other purposes. As used herein, "Emergency" or "Emergencies" shall mean any situation or condition in the City and County of San Francisco which creates a widespread threat to life, property, or the welfare of the City and County of San Francisco or its citizens as determined by the Mayor. In addition to the foregoing, Subtenant may apply to the Sublandlord to use the Premises (1) to temporarily house approximately One Hundred (100) nonviolent prisoners by submitting a written request to use the Premises to Sublandlord no less than (30) days prior to the date of the Subtenant's desired use of the Premises and (2) for any such other use approved in writing by the Executive Director or her designee during non-Emergencies and non-Permitted Use Periods by submitting a written request to use the Premises to the Sublandlord. Sublandlord shall not unreasonably withhold permission to use the Premises during such non-Emergency and/or non-Permitted Use Period. Except as otherwise provided above, the total number of days in all Permitted Use Periods during any year throughout the term of this Sublease shall not exceed

ninety (90) days. For purposes of this Section 6.1, the first year of this Sublease shall begin on the Effective Date and end on the date immediately preceding the annual anniversary of the Effective Date, and each subsequent year shall begin on the annual anniversary of the Effective Date and end on the date immediately preceding the next annual anniversary of the Effective Date. Except as otherwise provided herein, Subtenant shall not use the Premises for any purpose (including without limitation, the storage of any materials) during any days other than during Permitted Use Periods. During Permitted Use Periods, and except as otherwise provided herein, Subtenant may use the Premises only for activities related to the training of personnel in the Sheriff's Department of the City and County of San Francisco, all in accordance with the comprehensive management plan (the "Management Plan") attached hereto as Exhibit D and the emergency/contingency plan attached hereto as Exhibit E for evacuations when necessary, hostage situations, and escape situations. Subtenant shall not permit any inmates to be housed at the Premises who have been arrested for or convicted of a "violent felony" as defined in Section 667.5 of the Penal Code or a "serious felony" as defined in Section 1192.7 of the Penal Code, as each of those sections of the Penal Code may be amended from time to time~~a known record of violent behavior, including without limitation, a known record for murder, manslaughter, assault, battery, rape, or sexual molestation.~~ Subtenant shall not permit any portion of the Premises to be used as a shooting range by any of Subtenant's peace officers, personnel, or invitees. Subtenant acknowledges that there are residential dwellings and a public elementary school in the general vicinity of the Premises, and Subtenant agrees to use good faith efforts to prevent any interference with such residential and public school activities by Subtenant's use of the Premises. Subtenant shall not use the Premises, or any portion thereof, for any other purposes than those stated hereinabove. Subtenant shall not amend or otherwise modify the Management Plan without Sublandlord's prior written approval. On the Effective Date of this Sublease, Subtenant shall submit a schedule of the dates of its Permitted Use Periods for the next 365 days, and Subtenant shall submit an updated schedule of such projected Permitted Use Periods every six (6) months thereafter.

**6.2. Subtenant's Access to the Premises.** As provided in Section 30 of the Master Lease, Subtenant will have access to the Premises on a 24-hour, seven-days-a-week basis during any Permitted Use Period or other period as approved by Sublandlord.

**6.3 Sublandlord's Right to Enter and Use the Premises.** Sublandlord shall have the right to enter and use the Premises at any time during the Term of this Agreement which does not conflict with any Permitted Use Period for which Sublandlord has either received actual written notice from Subtenant or is shown on the latest schedule submitted by Subtenant to Sublandlord, each as required pursuant to Section 6.1 above.

**6.4 Rules and Regulations.** Subtenant agrees to adhere to all rules and regulations regarding the Premises or the Property , including, without limitation, rules and regulations regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time.

**6.5      Easements.** This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord under the Master Lease to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"), provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities. Sublandlord is not aware of any Additional Easements or other encumbrances which would interfere with Subtenant's use of the Premises. Provided, however, that if the exercise by Master Landlord of any of such rights shall effectively deprive Subtenant of the use of all or such a significant portion of the Premises as to render the remaining portion of the Premises untenable or unsuitable for continued use by Subtenant as contemplated under this Sublease for more than thirty (30) days, then Subtenant may terminate this Sublease upon thirty (30) days notice, subject to the surrender provisions of Section 18.1 below. If the Master Landlord exercises any of such rights in a manner and under circumstances where this Sublease is not terminated as set forth above, then Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises deprived from Subtenant by Master Landlord bears to the area of the Premises prior to Master Landlord's exercise of its rights.

**6.6      No Interference with Navy Operations.** Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over the Subtenant's use of the Premises in the event of any conflict, provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.

**6.7      No Unlawful Uses, Nuisances or Waste.** Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall eliminate any nuisances or hazards caused by Subtenant or its Agents or Invitees on or about the Premises.

## 7.      ALTERATIONS

**7.1. Construction of Alterations.** Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may be given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any permitted Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Alterations, Subtenant, at its sole expense, shall comply with all applicable laws for the construction of such permitted Alterations and shall demonstrate such compliance for Sublandlord upon request by Sublandlord. No material change from the plans and specifications approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of such construction at all times.

**7.2. Permitted Alterations.** Sublandlord and Subtenant hereby acknowledge that Subtenant has previously performed with Sublandlord's permission those alterations to the Premises described in Exhibit F. Subtenant shall perform such additional alterations to the Premises as described in Exhibit G. Subtenant shall also be responsible for making all improvements to the Premises necessary for the use described in Section 6.1 above, and Subtenant shall perform all alterations needed to bring the Premises into compliance with all applicable laws for the construction of any such alterations and Subtenant's use of the Premises, including without limitation, all safety requirements customarily associated with the operation of the jail facility in the City and County of San Francisco. The alterations described in Exhibit F and Exhibit G are collectively referred to herein as the "Permitted Alterations", and Subtenant shall obtain Sublandlord's prior written approval (which approval shall not be unreasonably withheld or delayed) for any other alterations that Subtenant is required to perform under this Sublease.

**7.3. Ownership of Alterations.** Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of Section 7.1 above shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove any Alterations from the Premises in accordance with the provisions of Section 18 hereof if Sublandlord, at its sole option and without limiting any of the provisions of Section 7.1 above, requires as a condition to approval of any such Alterations or consented that such Alterations be removed from the Premises following the expiration or termination of this Sublease.

**7.4. Subtenant's Personal Property.** All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of

Subtenant and may be removed by it subject to the provisions of Section 18 hereof. Subtenant hereby acknowledges and agrees that the furniture, furnishings and articles of movable personal property and equipment listed on Exhibit H currently on the Premises were not placed there by or for the account of Subtenant. Therefore, Subtenant shall not remove any such property from the Premises pursuant to its obligations under this Section 7.4.

## 8. REPAIRS AND MAINTENANCE

**8.1. Subtenant Responsible for Maintenance and Repair.** Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall protect and maintain the Premises and keep the Premises in good order and repair. Among other things, Subtenant shall provide its own security for the Premises. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, that may be necessary to maintain the Premises at all times in clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided however, that Subtenant shall not be required to make any Alterations or repairs (structural or otherwise) to the Premises which are not related to Subtenant's use of the Premises or to correct conditions affecting the Premises which existed prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition. Without limiting the foregoing, Subtenant specifically acknowledges and agrees to comply with the Protection and Maintenance Service provisions of Section 12 of the Master Lease.

**8.2. Utilities.** Subtenant shall be solely responsible for obtaining and shall pay all charges when due and owing for all utility services to the Premises, including, without limitation, all water, gas, heat, light, power, sewer, electricity, refuse, waste disposal and telecommunications services. Upon request, Subtenant shall promptly furnish Sublandlord with copies of all paid receipts for such utilities and charges.

**8.3. No Right to Repair and Deduct.** Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or and any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

## 9. LIENS

Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord as Additional Charges by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises other than the Permitted Alterations.

## 10. COMPLIANCE WITH LAWS

**10.1. Compliance with Laws.** Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, including, without limitation, all Laws relating to health and safety, the San Francisco Bay or shoreline use, and disabled accessibility (such as the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations), to the extent applicable whether foreseen or unforeseen, ordinary as well as extraordinary, provided, however, that Subtenant shall not be required to make any Alterations other than Alterations, if any, included in the Permitted Alterations in order to comply with such Laws unless such Alterations shall be occasioned by the Permitted Alterations or any other Alterations, or Subtenant's use of the Premises, or any act or omission of Subtenant, its Agents or Invitees. Notwithstanding the foregoing, no occurrence or situation arising during the term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

**10.2. Regulatory Approvals.** Subtenant understands and agrees that Subtenant's use of the Premises and construction of Alterations permitted hereunder (including the Approved Alterations) may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. To the extent such approvals or permits are required, Subtenant shall be solely responsible for obtaining any and all such regulatory approvals. Except in the case of the Permitted Alterations, Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord, which consent shall not be unreasonably withheld. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely

responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be timely and promptly paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") the Sublandlord and the Master Landlord including, but not limited to, all of their respective officers, directors, employees , agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties") against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval, except to the extent such Losses are caused by Sublandlord's negligence or willful misconduct.

**10.3. Compliance with Sublandlord's Risk Management Requirements.** Subtenant shall not do anything, or permit anything to be done, in or about the Premises or any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall also comply with all of the provisions of the Emergency/Contingency Plan attached hereto as Exhibit E.

## 11. ENCUMBRANCES

**11.1. Encumbrance By Subtenant.** Without the prior written consent of Sublandlord, not to be unreasonably withheld, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

## 12. DAMAGE OR DESTRUCTION

**12.1. Damage or Destruction to the Premises.** In the case of damage to or destruction of the Premises by earthquake, fire or any other casualty not caused by Subtenant, whether insured or uninsured, which prevents Subtenant from using the Premises for the purposes described herein, Subtenant may terminate this Sublease upon thirty (30) days' prior written notice to Sublandlord, and upon any such termination Subtenant shall surrender the Premises in accordance with Section 18 hereof and both parties shall be relieved of any liability for such termination or for repairing such damage. If Subtenant does not terminate this Sublease as provided in this Section 12.1. Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of Section 7.1 above.

**12.2. No Abatement in Rent.** In the event of any damage or destruction to the Premises, and if Subtenant does not terminate this Sublease as provided in Section 12.1 above, there shall be no abatement in the Rent payable hereunder.

**12.3. Waiver.** The Parties understand and agree that the foregoing provisions of this Section 12 are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and the Sublandlord and Subtenant each hereby waives and releases any right to terminate this Agreement in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

## 13. ASSIGNMENT AND SUBLETTING

**13.1. Restriction on Assignment and Subletting.** Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, its agents, employees, members, officers or members or representatives, or sublet any portion of the Premises, without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion.

## 14. DEFAULT; REMEDIES

**14.1. Events of Default.** Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

(a) **Rent.** Any failure to pay Rent or other sums, including sums due for utilities, within ten (10) days after such sums are due, which is not cured within five (5) days after written notice thereof by Sublandlord.

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease, provided Subtenant shall have a period of thirty (30) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 30-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly commences action to cure such default within such 30-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.

(c) **Vacation or Abandonment.** Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not Released, discharged, dismissed or vacated within sixty (60) days.

**14.2. Remedies.** Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies provided by law California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

**14.3. Sublandlord's Right to Cure Subtenant's Defaults.** If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord where prior notice by Sublandlord is impractical), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all reasonable sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remediating or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's failure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

## 15. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION

**15.1. Release and Waiver of Claims.** Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties and Master Landlord shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of any improvements on the Premises due to an earthquake or subsidence, except only to the

extent such Losses are caused by the negligence or willful misconduct of the Indemnified Parties. Without limiting the generality of the foregoing:

(a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties , and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause, except to the extent such Losses are caused by Sublandlord's negligence or willful misconduct.

(b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any claims for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.

(c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein. Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES , WAIVES AND DISCHARGES, the Indemnified Parties from any and all losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use, except to the extent such Losses are caused by the negligence or willful misconduct of the Indemnified Parties.

(d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance from the Indemnified Parties under federal and state relocation assistance laws.

(e) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses,

costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 15.1, excepting those arising from the negligence or willful misconduct of the Indemnified Parties.

(f) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(g) Subtenant has made such investigation of the facts pertaining to these waivers and releases it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(h) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Subtenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

(i) Nothing herein shall limit or otherwise relieve Master Landlord from Master Landlord's obligations under Master Landlord's environmental indemnity described in Section 19.3 below, the Federal Tort Claims Act, or any other applicable laws.

**15.2. Subtenant's Indemnity.** Except as otherwise provided in Section 19, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses, incurred in connection with or arising out of Subtenant's use of the Premises, including, without limitation: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Invitees, (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Invitees, occurring in, on or about the Premises (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) any construction or other work undertaken by Subtenant on or about the Premises whether before or during the Term of this Sublease; or (f) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Invitees, or of any trespassers, in, on or about the Premises or any Alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in

effect on or validly retroactive to the date of this Sublease and further except only to the extent such losses are caused by the negligence or intentional wrongful acts or omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease.

## 16. INSURANCE

**16.1. Subtenant's Insurance.** Sublandlord acknowledges that Subtenant maintains a program of self-insurance and agrees that Sublandlord shall not be required to carry any third-party comprehensive general liability insurance or other insurance with respect to this Sublease. Subtenant assumes the risk of damage to any of its personal property, except to the extent caused by the negligence or willful misconduct of Sublandlord.

## 17. ACCESS BY SUBLANDLORD

### 17.1. Access to Premises by Sublandlord.

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as reasonably determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and remain on the Premises throughout the period of such emergency, not to exceed fourteen (14) days. Sublandlord shall have the right to use any and all means Sublandlord reasonably considers appropriate to gain access to any portion of the Premises in an emergency, and Sublandlord shall have the right to alter or remove any Alterations or Subtenant's Personal Property as Sublandlord reasonably determines is necessary to respond to such emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting from the negligence or willful misconduct of Sublandlord or Sublandlord's Agents.

**17.2. Access to Premises by Master Landlord.** Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

## 18. SURRENDER

**18.1. Surrender of the Premises.** Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in good condition, order and repair, free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 7.2 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises.

## 19. HAZARDOUS MATERIALS

**19.1. No Hazardous Materials.** Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials other than materials that are part of the structure of any existing improvements on the Premises which is not disturbed by any activity of Subtenant or its Agents or Licensees, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction

thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Without limiting the foregoing, Subtenant acknowledges and agrees that it shall be bound by and will comply with the environmental protection provisions provided for in Section 13 of the Master Lease.

**19.2. Subtenant's Environmental Indemnity.** If Subtenant breaches any of its obligations contained in Section 19.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leaching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 15.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials caused by Subtenant or its Agents or Invitees, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and reasonable attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release caused by Subtenant or its Agents or Invitees. The foregoing indemnity shall not include Losses arising as a result of pre-existing Hazardous Materials on, at, in or about the Premises unless and to the extent Subtenant or its Agents or Invitees causes the Release of or exacerbates the condition of such pre-existing Hazardous Materials. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any non-pre-existing Hazardous Materials in, on, under or about the Premises or the Property,

Subtenant shall, immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises, and shall, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

**19.3. Master Landlord's Environmental Indemnity.** The Parties hereby acknowledge and agree that, pursuant to Section 330 of Public Law 102-484, as amended, Master Landlord is required to hold harmless, defend and indemnify the Sublandlord and Subtenant from and against any suit, claim, demand, action, liability, judgment, cost or fee, arising out of any claim for personal injury or property damage (including death, illness, loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant, contaminant, petroleum product, or petroleum derivative from or on the Premises as a result of Department of Defense activities at the Property. Accordingly, except as specifically provided in Section 19.2 above, Subtenant is not responsible for any remediation activities with respect to the presence of Hazardous Materials on the Premises prior to the Commencement Date.

**19.4. Acknowledgment of Receipt of EBS and FOSL Reports.** Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease.

## **20. SECURITY DEPOSIT**

**20.1. Security Deposit.** Sublandlord hereby waives any requirement for a security deposit for Subtenant's right to use the Premises in accordance with the terms and conditions of this Sublease.

## **21. GENERAL PROVISIONS**

**21.1. Notices.** Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid as follows:

## Notice Address of Sublandlord:

Treasure Island Development Authority  
Treasure Island Project Office  
401 Palm Avenue  
Building 1, Room 217  
Treasure Island  
Attn: Executive Director  
Tel. No.: 415-274-0600  
Fax No.: 415-274-0299

with a copy to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Michael S. Cohen  
Tel No.: 415-554-4722  
Fax No.: 415 554-4755

## Notice Address of Subtenant:

City and County of San Francisco  
Department of Real Estate  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Steve Alms  
Tel No.: 415-554-9865  
Fax No.: 415-552-9216

with a copy to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Donnell W. Choy  
Tel. No.: 415-554-4736  
Fax No.: 415-554-4755

## Notice Address of Master Landlord: BRAC Operations Office

1220 Pacific Highway  
San Diego, California 92132-5190

Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted

delivery of any notice, if such attempted delivery is in compliance with this Section 21.1 and applicable Laws, shall be deemed receipt of such notice.

**21.2. Controller's Certification of Funds.** The terms of this Sublease shall be governed by and subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco. Notwithstanding anything to the contrary contained in this Sublease, there shall be no obligation for the payment or expenditure of money by Subtenant under this Sublease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 6.302 of the Charter of the City and County of San Francisco, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Initial Term of this sublease commences, sufficient funds for the payment of Rent and any other payments required under this Sublease are not appropriated for any reason, then Subtenant may terminate this Lease, without penalty, liability or expense of any kind to Subtenant, as of the last date on which sufficient funds are appropriated. Subtenant shall use its reasonable efforts to give Sublandlord reasonable advance notice of such termination.

**21.3. No Implied Waiver.** No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Rent during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease. The provisions of this Section 21.3 shall be mutual to the extent applicable.

**21.4. Amendments.** Neither this Sublease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

**21.5. Authority.** The person signing below for Sublandlord represents and warrants that Sublandlord is a non-profit, public benefit corporation, and an instrumentality of the State of California and the City and County of San Francisco, and that he or she has the right and authority to execute this Sublease. If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of

Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosure set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

**21.6. Joint and Several Obligations.** The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.

**21.7. Interpretation of Sublease.** The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City of San Francisco holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

**21.8. Successors and Assigns.** Subject to the provisions of Section 13, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.

**21.9. Brokers.** Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party

in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

**21.10. Severability.** If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

**21.11. Governing Law.** This Sublease shall be construed and enforced in accordance with the Laws of the State of California.

**21.12. Entire Agreement.** This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties regarding the interim subleasing of the Premises and supersedes all prior written or oral negotiations, discussions, understandings and agreements with respect thereto. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein.

**21.13. Attorneys' Fees.** In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees.

**21.14. Time of Essence.** Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.

**21.15. Cumulative Remedies.** All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

**21.16. Survival of Indemnities.** Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof.

**21.17. Relationship of Parties.** Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint

venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

**21.18. Recording.** Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county without the consent of Sublandlord.

**21.19. Non-Liability of Indemnified Parties' officials, employees and Agents.** No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant or its successors and assigns in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant or its successors and assigns, or for any obligation of Sublandlord under this Agreement.

**21.20. Counterparts.** This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**21.21. Master Landlord's Consent.** This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord

**21.22. Consent by Sublandlord.** Where consent of Sublandlord is required hereunder, Subtenant may rely on any written consent granted by Sublandlord's Executive Director or her designee.

## 22. SPECIAL PROVISIONS

**22.1. Signs.** Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises, without Sublandlord's and Master Landlord's prior written consent, which Sublandlord and Master Landlord may grant or withhold in their sole and absolute discretion.

**22.2. Prevailing Wages.** With respect to the construction of the Approved Alterations or any Alterations, any employee performing services for Subtenant shall be paid not less than the highest prevailing rate of wages as required by Section A7.204 of the City and County of San Francisco Charter and Sections 6.33 through 6.45 of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California.

**22.3. Public Transit Information.** Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of

written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Building and encouraging use of such facilities, all at Subtenant's sole expense.

#### **22.4. Non-Discrimination in City Contracts and Benefits Ordinance.**

(a) Covenant Not to Discriminate. In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Subtenant, in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) Sub-Subleases and Other Subcontracts. Subtenant shall include in all sub-subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such sub-subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all sub-subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all sub-subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) Non-Discrimination in Benefits. Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations in San Francisco or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the Sublease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in

violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

**22.5. No Relocation Assistance; Waiver of Claims.** Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated or expires by its own terms, and Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 *et seq.*), except as otherwise specifically provided in this Sublease with respect to a Taking.

**22.6. MacBride Principles - Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**22.7. Tropical Hardwood Ban.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.

**22.8. Conflicts of Interest.** Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.

**22.9. Charter Provisions.** This Sublease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

**22.10. Prohibition of Tobacco Advertising.** Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the Sublandlord, including the Premises and the Property. This prohibition includes the placement of the name of a company producing selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

Sublandlord and Subtenant have executed this Sublease in duplicate as of the date first written above.

**SUBTENANT:**  
**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

By: \_\_\_\_\_  
Its: Director of Property

**SUBLANDLORD:**  
**THE TREASURE ISLAND DEVELOPMENT**  
**AUTHORITY**

By: \_\_\_\_\_  
Its: Executive Director

Approved as to Form:

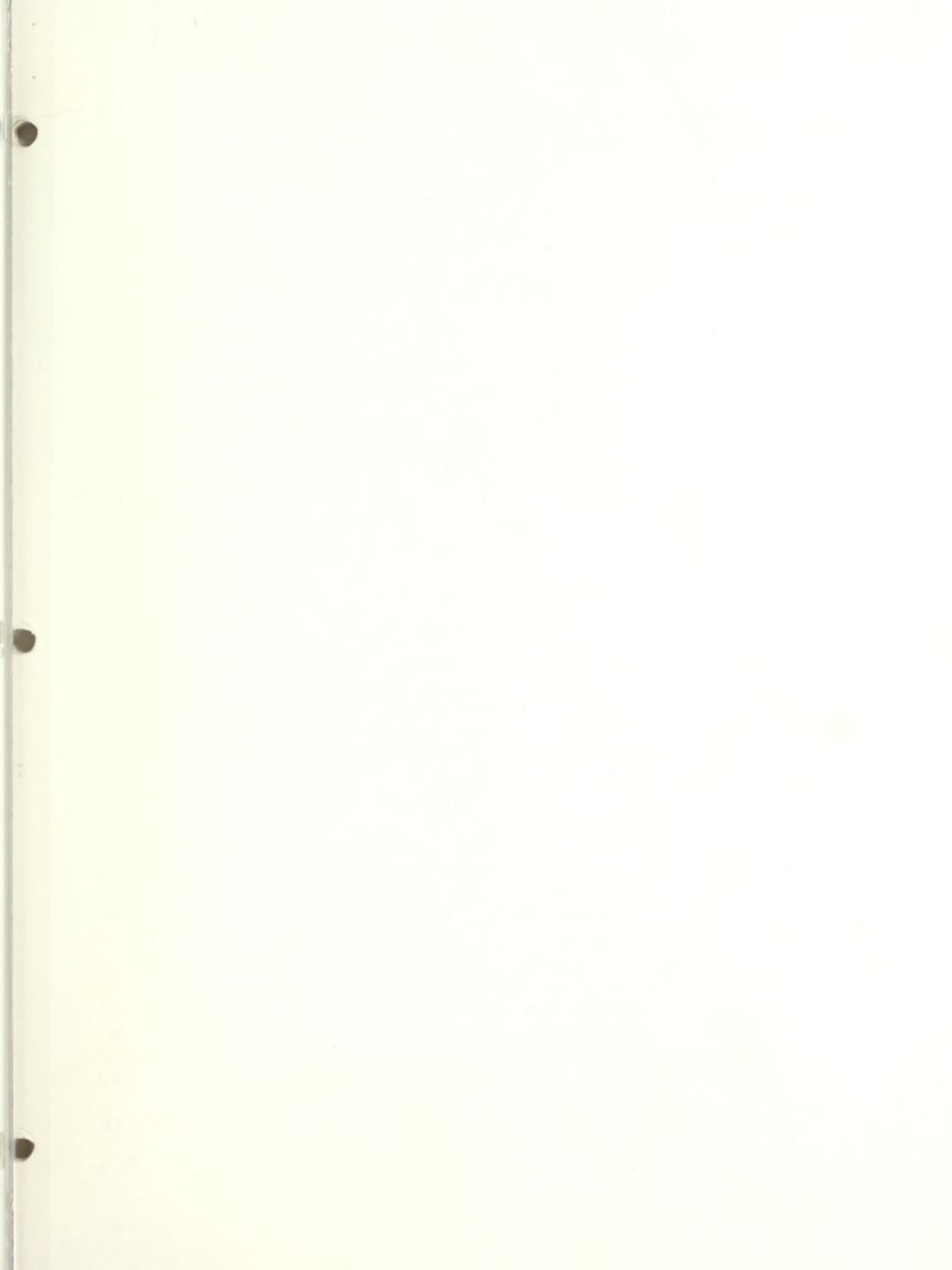
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Deputy City Attorney

Approved:

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Base Conversion Manager  
U.S. Navy  
Engineering Field Activities West



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**AGENDA ITEM  
TREASURE ISLAND DEVELOPMENT AUTHORITY  
City and County of San Francisco**

Agenda Item No.

8

Meeting of April 11, 2001

**Subject:** Request for Approval of Contract with Rubicon Enterprises, Inc. for landscaping and grounds maintenance services for the period March 2001 through February 2002 for an amount not to exceed \$780,000

**Contact/Phone:** Annemarie Conroy, Executive Director  
Eila Arbuckle, Finance Manager  
274-0660

**SUMMARY OF PROPOSED ACTION**

Authorize execution of a new contract with Rubicon, a member organization of the Treasure Island Homeless Development Initiative, for landscaping and grounds maintenance services for the period March 2001 through February 2002, for an amount not to exceed \$780,000.

**DISCUSSION**

Rubicon, a member organization of the Treasure Island Homeless Development Initiative (TIHDI), is a non-profit agency organized to provide services to train homeless and other economically disadvantaged persons for jobs. One of its programs is contractual grounds maintenance services. These are identified in the draft Homeless Component of the Treasure Island Reuse Plan as one of the economic development opportunities available to assist homeless and other economically disadvantaged San Franciscans. The Board of Supervisors has authorized the Authority to engage in sole source negotiations with TIHDI member organizations for contracts for economic development opportunities identified in the Reuse Plan.

Landscaping and grounds maintenance services are required to fulfill the requirements of the agreement for caretaker services between the Authority and the Navy, as well as to promote public health and safety on former naval station Treasure Island. The TI Project staff have divided Treasure and Yerba Buena Islands into landscaping parcels and have established three levels of landscaping services. Maps of the parcels are Exhibits 1 and 2 to the attached contract, and a detailed outline of each of the levels of service is provided in Exhibit 3. Rubicon will follow the requirements of the City and County of San Francisco's Integrated Pest Management Program in carrying out its activities. The total amount of the proposed contract is \$780,000, with monthly payments of \$49,951.50. Approximately \$180,000 of the total Rubicon contract amount is included to fund as needed services identified in the contract as special adjunct services.

**RECOMMENDATION**

Staff recommends approval of the contract with Rubicon.



Resolution No. \_\_\_\_\_

**AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT WITH RUBICON ENTERPRISES, INC. FOR LANDSCAPING AND GROUNDS MAINTENANCE SERVICES ON TREASURE AND YERBA BUENA ISLANDS FOR AN AMOUNT NOT TO EXCEED SEVEN HUNDRED EIGHTY THOUSAND DOLLARS (\$780,000).**

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, In 1995, the General Services Administration and the Bureau of Land Management determined that Yerba Buena Island was surplus to the Federal Government's needs and could be transferred to the administrative jurisdiction of the Department of Defense under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure Island; and,

WHEREAS, On May 2, 1997, the City's Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust, vested in the Authority the Authority to administer the public trust for commerce, navigation and fisheries as to such property; and

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency for Treasure Island in 1997; and,

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WHEREAS, The Board of Supervisors authorized sole sourcing certain grounds maintenance and janitorial contracts to homeless support providers on July 25, 1996, through Resolution Number 672-96; and

WHEREAS, It is necessary to provide landscaping and grounds maintenance services to fulfill the requirements of the Authority's contract with the United States navy for caretaker services on the Base, and to promote public health and safety on the Base; and

WHEREAS, the Authority wishes to support the Homeless Assistance Component of the Treasure Island Reuse Plan; and

WHEREAS, the Contractor is a member of the Treasure Island Homeless Development Initiative; and

WHEREAS, the Contractor represents and warrants that it is qualified to perform the landscaping and grounds maintenance services required by the Authority as set forth in this Agreement; and

WHEREAS, the Authority has negotiated with the Contractor to reach agreement on the scope of work, and budget for landscaping and grounds maintenance as shown in Appendices A and B;

WHEREAS, the Authority has negotiated with the Contractor to reach agreement on the boundaries of each parcel identified in Exhibits 1 and 2 to facilitate anticipated contract amendments that will eliminate various parcels from this Agreement as such parcels are subleased to various tenants; and

NOW, therefore be it RESOLVED, That the Authority hereby authorizes the Executive Director to execute a contract with the Rubicon Enterprises Group, Inc. for landscaping and grounds maintenance services on Treasure and Yerba Buena Islands, for an amount not to exceed seven hundred eighty thousand dollars (\$780,000).

#### CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on April 11, 2001.

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John Elberling, Secretary

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**City and County of San Francisco  
Treasure Island Development Authority  
Treasure Island Building One  
410 Palm Avenue  
San Francisco, California 94130**

Agreement between the TREASURE ISLAND DEVELOPMENT AUTHORITY and  
AND

**"RUBICON ENTERPRISES, INC."**

This Agreement is made this first day of March 2001, in the City and County of San Francisco ("City"), State of California, by and between Rubicon Enterprises, Inc., hereinafter referred to as "Contractor," and the Treasure Island Development Authority, hereinafter referred to as "Authority," acting by and through the Executive Director of the Authority

Recitals

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, In 1995, the General Services Administration and the Bureau of Land Management determined that Yerba Buena Island was surplus to the Federal Government's needs and could be transferred to the administrative jurisdiction of the Department of Defense under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure Island; and,

WHEREAS, On May 2, 1997, the City's Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust, vested in the Authority the Authority to administer the public trust for commerce, navigation and fisheries as to such property; and

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency for Treasure Island in 1997; and,

WHEREAS, The Board of Supervisors authorized sole sourcing certain grounds maintenance and janitorial contracts to homeless support providers on July 25, 1996, through Resolution Number 672-96; and

WHEREAS, It is necessary to provide landscaping and grounds maintenance services to fulfill the requirements of the Authority's contract with the United States navy for caretaker services on the Base, and to promote public health and safety on the Base; and

WHEREAS, the Authority wishes to support the Homeless Assistance Component of the Treasure Island Reuse Plan; and

WHEREAS, the Contractor is a member of the Treasure Island Homeless Development Initiative; and

WHEREAS, the Contractor represents and warrants that it is qualified to perform the landscaping and grounds maintenance services required by the Authority as set forth in this Agreement; and

WHEREAS, the Authority has negotiated with the Contractor to reach agreement on the scope of work, and budget for landscaping and grounds maintenance as shown in Appendices A and B;

WHEREAS, the Authority has negotiated with the Contractor to reach agreement on the boundaries of each parcel identified in Exhibits 1 and 2 to facilitate anticipated contract amendments that will eliminate various parcels from this Agreement as such parcels are subleases to various tenants; and

Now, THEREFORE, the parties agree as follows:

1. Classification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of Authority's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to Authority at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

Authority and City have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**2. Term of the Agreement**

Subject to Section 1, the term of this Agreement shall be from March 1, 2001 through February 28, 2002.

**3. Effective Date of Agreement**

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

**4. Services Contractor Agrees to Perform**

The Contractor agrees to perform the tasks outlined in Appendix A "Scope of Services".

**5. Compensation**

Compensation shall be made through monthly invoices for services that the Executive Director of the Treasure Island Development Authority, in her sole discretion, concludes have been performed as of the last day of each month. In no event shall the amount of this Agreement **SEVEN HUNDRED EIGHTY THOUSAND DOLLARS (\$780,000)**. Contractor shall invoice the Authority at a flat rate of **FORTY-NINE THOUSAND NINE HUNDRED FIFTY-ONE DOLLARS AND FIFTY CENTS (\$49,951.50)** per month for routine landscaping and grounds maintenance services, and shall separately identify indefinite quantity work services and the fees for such services on each invoice. Indefinite quantity work services must be approved in writing by the Authority prior to Contractor commencing any indefinite quantity work.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until services required under this Agreement are received from Contractor and approved by the Treasure Island Project as being in accordance with this Agreement. Authority may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall Authority be liable for interest or late charges for any late payments.

**6. Guaranteed Maximum Costs**

(a) The Authority's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

(b) Except as may be provided by laws governing emergency procedures, officers and employees of Authority and/or City are not authorized to request, and the Authority is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

(c) Officers and employees of the Authority and/or City are not authorized to offer or promise, nor are the Authority and/or City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

(d) The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

## 7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and must include the Contract Progress Payment Authorization number Any reimbursements claimed for direct expenses must be accompanied by appropriate back-up documentation. Each invoice shall cover only a single calendar month. Any invoice submitted by Contractor that does not include all required documentation will be returned to Contractor unprocessed. All amounts paid by Authority to Contractor shall be subject to audit by Authority.

Payment shall be made by Authority to Contractor at the address specified in the section entitled "Notices to the Parties."

## 8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the Authority for three times the amount of damages which the Authority sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the Authority for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the Authority for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the Authority if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the Authority or City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the Authority or City; (c) conspires to defraud the Authority or City by getting a false claim allowed or paid by the Authority; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Authority or City; or (e) is a beneficiary of an inadvertent submission of a false claim to the Authority or City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the Authority or City within a reasonable time after discovery of the false claim.

## 9. Disallowance

If Contractor claims or receives payment from Authority or City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to Authority upon Authority's request. At its option, Authority may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

## 10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of Authority or City property for private gain. If such a possessory interest is created, then the following shall apply:

- (1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;
- (2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the Authority to the Assessor of the City and County of San Francisco ("Assessor") the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
- (3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time) Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the Assessor, the State Board of Equalization or other public agency as required by law.
- (4) Contractor further agrees to provide such other information as may be requested by the Authority to enable the Authority to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## 11. Payment Does Not Imply Acceptance of Work

The granting of any payment by Authority or City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or

materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by Authority and in such case must be replaced by Contractor without delay.

## **12. Qualified Personnel**

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with Authority's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Authority's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

## **13. Responsibility for Equipment**

Authority and City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by Authority or City.

## **14. Independent Contractor; Payment of Taxes and Other Expenses**

a. **Independent Contractor:** Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Authority under this Agreement. Contractor is liable for the acts and omissions of itself, its employees and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Authority or City and Contractor.

Any terms in this Agreement referring to direction from Authority shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained.

b. **Payment of Taxes and Other Expenses:** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Authority, upon notification of such fact by Authority, Contractor shall promptly remit such amount due or arrange with Authority to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Authority or City.

Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in Authority's financial liability so that Authority's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

## 15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (1) Workers' Compensation, with Employers' Liability Limits not less than \$1,000,000 each accident; and
- (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (3) Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

- (1) Name as Additional Insured the Treasure Island Development Authority, the City and County of San Francisco, and their Officers, Agents, and Employees.
- (2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- c. All policies shall provide thirty (30) days' advance written notice to Authority of cancellation mailed to the following address:

Treasure Island Development Authority  
Treasure Island Building One  
410 Palm Avenue  
San Francisco CA 94130

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Authority receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Authority may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor must furnish to Authority certificates of insurance, in form and with insurers satisfactory to Authority, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon Authority request.

h. Approval of the insurance by Authority shall not relieve or decrease the liability of Contractor hereunder.

## 16. Indemnification

Contractor shall indemnify and save harmless Authority and City and their officers, agents and employees from, and, if requested, shall defend them against any and all loss, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, resulting directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, the use of Contractor's facilities or equipment provided by Authority or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Authority, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Authority and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee.

In addition to Contractor's obligation to indemnify Authority and City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority and City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and continues at all times thereafter.

Contractor shall indemnify and hold Authority and City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Authority, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

## **17. Incidental and Consequential Damages**

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights which Authority may have under applicable law.

## **18. Liability of Authority and City**

AUTHORITY'S AND CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AUTHORITY OR CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

## **19. Left blank by agreement of the parties."**

## **20. Default; Remedies**

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

- (1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, or 49.
- (2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice thereof from Authority to Contractor.
- (3) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.
- (4) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any

jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, Authority shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, Authority shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Authority on demand all costs and expenses incurred by Authority in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Authority shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Authority and Contractor all damages, losses, costs or expenses incurred by Authority as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

## 21. Termination for Convenience

a. Authority shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Authority shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by Authority and to minimize the liability of Contractor and Authority to third parties as a result of termination. All such actions shall be subject to the prior approval of Authority. Such actions shall include, without limitation:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Authority.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At Authority's direction, assigning to Authority any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Authority shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (5) Subject to Authority's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

- (6) Completing performance of any services or work which Authority designates to be completed prior to the date of termination specified by Authority.
- (7) Taking such action as may be necessary, or as the Authority may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which Authority has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to Authority an invoice, which shall set forth each of the following as a separate line item:

- (1) The reasonable cost to Contractor, without profit, for all services and other work Authority directed Contractor to perform prior to the specified termination date, for which services or work Authority has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of ten percent (10%) of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of Authority, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5 percent (5%) of such cost.
- (3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the Authority or otherwise disposed of as directed by the Authority.
- (4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to Authority, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall Authority be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by Authority, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, Authority may deduct: (1) all payments previously made by Authority for work or other services covered by Contractor's final invoice; (2) any claim which Authority may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the

Authority, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Authority's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. Authority's payment obligation under this Section shall survive termination of this Agreement.

## 22. Rights and Duties Upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8, 9, 10, 11, 13, 14, 16, 17, 18, 24, 25, 26, 27, 28, 30, 43, 45 through 48, and 50.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Authority, and deliver in the manner, at the times, and to the extent, if any, directed by Authority, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to Authority. This subsection shall survive termination of this Agreement.

## 23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of City's Charter and §87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

## 24. Proprietary or Confidential Information of Authority and City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by Authority or City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Authority or City. Contractor agrees that all information disclosed by Authority or City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

## 25. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To Authority and City:

Annemarie Conroy, Executive Director  
Treasure Island Development Authority

**Treasure Island Building One  
410 Palm Avenue  
San Francisco, CA 94130  
Email= Annemarie Conroy @ci.sf.ca.is.com  
Fax = 415/274-0299**

To Contractor:

Rick Aubry, President  
Rubicon Enterprises, Inc.  
2500 Bissell Avenue  
Richmond CA 94804

Any notice of default must be sent by registered mail.

## **26. Ownership of Results**

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to Authority. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

## **27. Works for Hire**

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the Authority. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the Authority, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the Authority, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

## **28. Audit and Inspection of Records**

Contractor agrees to maintain and make available to the Authority, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit Authority to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Authority by this Section.

## **29. Subcontracting**

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Authority in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

## **30. Assignment**

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Authority by written instrument executed and approved in the same manner as this Agreement.

## **31. Reserved**

## **32. Earned Income Credit (EIC) Forms**

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty (30) days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

## **33. Minority/Women/Local Business Utilization; Liquidated Damages**

### **a. Compliance**

Contractor understands and agrees to comply fully with all provisions of Chapter 12D.A ("Minority/Women/ Local Business Utilization Ordinance--IV") of the San Francisco

Administrative Code and agrees to include this paragraph in all subcontracts made in fulfillment of the Contractor's obligations under this Agreement. Said provisions are incorporated herein by reference and made a part of this Agreement as though fully set forth. Contractor's willful failure to comply with Chapter 12D.A is a material breach of contract.

**b. Enforcement**

If Contractor willfully fails to comply with any of the provisions of Chapter 12D.A, the rules and regulations implementing Chapter 12D.A, or the provisions of this Agreement pertaining to MBE or WBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or ten percent (10%) of the total amount of this Agreement, or one thousand dollars (\$1,000), whichever is greatest. The Director of the City's Human Rights Commission (HRC) may also impose other sanctions against Contractor authorized in Chapter 12D.A, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's MBE or WBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to §12D.A.16C.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with Chapter 12D.A for a period of three years following termination of this contract.

**34. Nondiscrimination; Penalties**

**a. Contractor Shall Not Discriminate**

In the performance of this Agreement, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any Authority or City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Contractor.

**b. Subcontracts**

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the S.F. Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**c. Nondiscrimination in Benefits**

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the Authority elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the S.F. Administrative Code.

**d. Condition to Contract**

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

**e. Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the S.F. Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §12B.2(h) of the S.F. Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

**35. MacBride Principles—Northern Ireland**

Pursuant to S.F. Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

**36. Tropical Hardwood and Virgin Redwood Ban**

Pursuant to S.F. Administrative Code §121.5(b), the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**37. Drug-Free Workplace Policy**

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

### **38. Resource Conservation; Liquidated Damages**

Chapter 21A of the S.F. Administrative Code (“Resource Conservation”) is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 21A will be deemed a material breach of contract.

In the event Contractor fails to comply in good faith with any of the provisions of Chapter 21A, Contractor will be liable for liquidated damages in an amount equal to Contractor’s net profit under this Agreement, or five percent (5%) of the total contract amount, whichever is greater. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to City upon demand and may be offset against any monies due to Contractor from any contract with City.

### **39. Compliance with Americans with Disabilities Act**

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

### **40. Sunshine Ordinance**

In accordance with S.F. Administrative Code §67.24(e), contracts, contractors’ bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person’s or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

### **41. Public Access to Meetings and Records**

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that

such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

#### **42. Requiring Minimum Compensation for Employees**

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.ci.sf.ca.us/MCO](http://www.ci.sf.ca.us/MCO). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the Authority contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, the Contractor shall pay \$9.00 an hour through December 31, 2001. On January 1, 2002, Contractor shall increase the hourly gross compensation to \$10.00 an hour; provided, however, that if Contractor is a Nonprofit Corporation or a public entity, it shall be required to pay the increased amount only if the City makes the finding required by Section 12P.3(a)(ii) of the San Francisco Administrative Code. If Contractor is required to increase the gross hourly compensation to \$10.00 an hour, it shall provide the 2.5% annual increase required by the MCO for each of the next three years.

(b) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the Authority with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

(c) Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Authority, shall determine whether such a breach has occurred.

(d) If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Authority, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

- (2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
- (3) The right to terminate this Agreement in whole or in part;
- (4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (5) The right to bar Contractor from entering into future contracts with the City for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

(e) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(f) Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the CITY, which communications are marked to indicate that they are to be distributed to Covered Employees.

(g) Contractor shall provide reports to the Authority in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

(h) The Contractor shall provide the Authority with access to pertinent records after receiving a written request from the Authority to do so and being provided at least five (5) business days to respond.

(i) The Authority may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the Authority from investigating any report of an alleged violation of the MCO.

(j) Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of

Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, Authority may pursue any of the remedies set forth in this Section against Contractor.

(k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

(l) If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

#### 43. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

#### 44. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Authority to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than twenty percent (20%).

#### **45. Administrative Remedy for Agreement Interpretation**

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the City's Purchasing who shall decide the true meaning and intent of the Agreement.

#### **46. Agreement Made in California; Venue**

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

#### **47. Construction**

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

#### **48. Entire Agreement**

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 44.

#### **49. Compliance with Laws**

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

#### **50. Severability**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be illegal or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

AUTHORITY

Recommended by:

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Annemarie Conroy, Executive Director  
Treasure Island Development Authority

Approved as to Form:

Louise H. Renne  
City Attorney

By \_\_\_\_\_  
Deputy City Attorney

Approved:

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Director of Purchasing

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

---

Rick Aubry, President  
Rubicon Enterprises, Inc.  
2500 Bissell Avenue  
Richmond CA 94804  
Federal Tax ID 69-035815

## APPENDIX A: SCOPE OF SERVICES

Rubicon Enterprises, Inc. ("Contractor") shall provide all labor, materials, and equipment necessary to perform groundskeeping and landscape maintenance services on Base parcels as identified in Exhibit 1, "Map of Treasure Island," and Exhibit 2, "Map of Yerba Buena Island." Each parcel identified in Exhibits 1 and 2 shall be maintained to Level of Service 1, 2, or 3 as described in Exhibit 3, "Landscape Maintenance Specifications for Treasure Island and Yerba Buena Island." These specifications describe the scope of work for each of the three levels of service. In fulfilling the terms of this Agreement, Contractor shall follow the City and County of San Francisco's Integrated Pest Management Program.

In performing its rights and responsibilities under this Agreement, Contractor shall comply with the workforce hiring goals for qualified homeless or otherwise economically disadvantaged persons and San Francisco residents, as provided in Addendum 1 to this Appendix A.

The following parcels are designated for Level of Service 1:

Parcel/Parcel Number

1  
1A  
2  
3  
13  
15  
24  
Quarters 61

The following parcels are designated for Level of Service 2:

Parcel/Parcel Number

5  
10  
14  
16  
Quarters 1  
Quarters 2 – 7

The following parcels are designated for Level of Service 3:

Parcel Number

Below 1-7

4  
6  
6B  
7  
8  
12  
17  
18  
18B  
19  
22

23

25

27

Adjunct Areas for Routine Maintenance Services

- Item 1 Firebreaks
- Item 2 Seawall (outer)
- Item 3 Seawall (inner)
- Item 4 Garbage & Tourist Stop
- Item 5 Garbage Cans on Treasure Island
- Item 6 Poison Oak
- Item 7 Annual Planting and Maintenance
- Item 8 Disease and Insect Treatments
- Item 9 Storm Damage Clean up

Adjunct Work Items

- Item 10 Reservoir Maintenance
- Item 11 Pump Station Maintenance
- Item 12 Parcel 21
- Item 13 Parcel 21A
- Item 14 Parcel 27A

## ADDENDUM 1 TO APPENDIX A

### 1. WORKFORCE HIRING GOALS

In performing its rights and responsibilities under this Agreement, Contractor shall comply with the following workforce hiring goals for qualified homeless or otherwise economically disadvantaged persons and San Francisco residents.

**1.1 Contractor's Workforce Hiring Goals.** Contractor shall use Good faith Efforts to meet the work force hiring goals described herein (the "Workforce Goals"). For purposes of this Section 1, Contractor's Good Faith Efforts shall include, but not be limited to, the following:

- (a) Submitting detailed written plans describing how Contractor intends to meet the Workforce Goals (a "Hiring Plan").
- (b) Listing jobs available on the Premises with the TIHDI Job Broker at least two weeks prior to advertising for applicants elsewhere;
- (c) Considering for appropriate job openings all candidates who are qualified, screened and referred to it by the TIHDI Job Broker;
- (d) Establishing with TIHDI mutually acceptable means of communicating about job openings and provide information about jobs and about outcomes of referrals within a reasonable time upon request by the TIHDI Job Broker;
- (e) Consulting with the TIHDI Job Broker on an ongoing basis about how to meet Contractor's Workforce Goals; and
- (f) Meeting and conferring with the TIHDI Job Broker to discuss and attempt to resolve any problems with Contractor meeting its Workforce Goals.

**1.2 Burden of Proof.** If the Workforce Goals are not met, Contractor shall have the burden of establishing in any Enforcement Procedure described in Section 1.9 below that it made Good Faith Efforts and that the candidates who were selected were better qualified for work than the homeless or economically disadvantaged persons who applied or were referred by the TIHDI Job Broker.

**1.3 Construction Workforce.** Without obligation (other than as expressly set forth herein), Contractor shall also be required to give consideration for hiring on all construction projects on the Premises to qualified homeless or otherwise economically disadvantaged persons, and to qualified residents of San Francisco whose annual income, at the time of hire, is at or below fifty percent (50%) of median income for the City as determined by HUD.

**1.4 Subcontracting.** Contractor will consider subcontracting certain tasks to be performed by Contractor under this Agreement to TIHDI member organizations, particularly for grounds keeping, janitorial, recycling and deconstruction activities. Subcontracts with TIHDI organizations will be included for purposes of determining Contractor's Good Faith Efforts to meet the Work Force Goals.

## 1.5 Hiring Plan.

(a) Contractor shall submit its Hiring Plan to the Authority within sixty (60) days of the Commencement Date. Contractor's Hiring Plan shall include a detailed description of how Contractor intends to meet its Workforce Goals, which description should include community outreach and recruiting efforts, hiring procedures (e.g., phased hiring), a projected schedule for meeting the Workforce Goals, and alternative courses of action if it appears that the Workforce Goals will not be met.

(b) During the first 30 days after the Hiring Plan is submitted, the Authority and Contractor shall negotiate in good faith solutions to any deficiencies in the Hiring Plan as reasonably determined by the Authority. At the expiration of such 30-day period, the Authority shall advise Contractor, through a written "Notice of Noncompliance," of any alleged deficiency in the Hiring Plan remaining at the close of such negotiations. The Notice of Noncompliance shall state the specific basis for the alleged deficiency(ies) and the Authority's suggested cure. Contractor shall advise the Authority within 10 days of its receipt of the Notice of Noncompliance whether Contractor accepts the suggested cure. If the Contractor rejects the suggested cure, either party may proceed immediately to the Enforcement Procedure pursuant to Section 1.9 below by filing a Request for Enforcement ("Request") on the Hiring Plan. The Request shall specify the issues presented and the relief requested.

**1.6 Reports.** Contractor shall prepare reports regarding the composition of Contractor's work force reasonably satisfactory to the Authority.

**1.7 Matters Subject to Enforcement Procedure.** In addition to the initial preparation of the Hiring Plan, all matters related to implementing the Hiring Plan and the Workforce Goals are subject to the Enforcement Procedure described in Section 1.9 below.

**1.8 Implementation of Enforcement Procedure.** The Enforcement Procedure, as provided for in Section 1.9 below, shall be the exclusive procedure for resolving any dispute concerning the interpretation or implementation of the Hiring Plan or any alleged deficiency in Contractor's Good Faith Efforts to achieve the Workforce Goals. The Enforcement Procedure shall be implemented by the Human Rights Commission of the City of County of San Francisco (the "Commission"), which shall have the powers described below unless otherwise provided by law.

(a) All subcontracts related to the Agreement ("Subcontracts") shall incorporate the provisions of this Section 1 and the Authority shall have the right to enforce said obligations, requirements and agreements against the Contractor or its subcontractors. Contractor shall require, by contract, that each subcontractor participates in Enforcement Procedure proceedings in which it may be identified in a Request, and that each subcontractor shall be bound by the outcome of such Enforcement Procedure according to the decision of the Commission.

## 1.9 Enforcement Procedure.

(a) If the Authority reasonably determines that Contractor has failed to use Good Faith Efforts to meet the Workforce Goals, or for any other matter subject to this Enforcement Procedure the Authority shall send a written Notice of Noncompliance to Contractor describing the basis for its determination and suggesting a means to cure any

deficiencies. If Contractor does not, in the reasonable discretion of the Authority, cure the deficiency within ten (10) days, the matter shall be submitted to the following Enforcement Procedure.

(i) Prior to the filing and service of a Request, the parties to any dispute shall meet and confer in an attempt to resolve the dispute.

(ii) The Authority, Contractor or any subcontractor may commence resolution of any dispute covered by the Enforcement Procedure by filing a Request with the Commission. Where the Authority is not the complaining party, the Request shall be served on the Authority. Where the Authority is the complaining party, the Request shall be served on the Contractor at the Notice Address listed in the Agreement, and the non-compliant subcontractor, if any, if such service can be achieved with reasonable effort. The Request shall be filed and served either by hand delivery or by registered or certified mail. The Request shall identify the entities involved in the dispute and state the exact nature of the dispute and the relief sought. If the complaining party seeks a temporary restraining order and/or a preliminary injunction, the Request shall so state in the caption of the Request.

(iii) Service on the Contractor of the Request or any notice provided for by this Section 1 shall constitute service of the Request or notice on all subcontractors who are identified as being in alleged noncompliance in the Request. The Contractor shall promptly serve the Request or notice, by hand delivery or registered or certified mail, on all such subcontractors.

(iv) The TIHDI Job Broker shall have the right to present testimony or documentary evidence at Enforcement Procedure proceedings.

(v) After the filing and the service of a Request, the parties shall negotiate in good faith for a period of 10 business days in an attempt to resolve the dispute; provided that the complaining party may proceed immediately to the Enforcement Procedure, without engaging in such a conference or negotiations, if the facts could reasonably be construed to support the issuance of a temporary restraining order or a preliminary injunction ("Temporary Relief"). The Commission shall determine whether the facts reasonably supported the issuance of Temporary Relief.

(vi) If the dispute is not settled within 10 business days, a hearing shall be held within 90 days of the date of the filing of the Request, unless otherwise agreed by the parties or ordered by the Commission upon a showing of good cause; provided, that if the complaining party seeks a temporary restraining order, the hearing on the motion for a temporary restraining order shall be heard not later than two (2) business days after the filing of the Request, and provided further, if a party seeks a preliminary injunction, such motion shall be heard on 15 days' notice. The Commission shall set the date, time and place for the Enforcement Procedure hearing(s) within the proscribed time periods by giving notice by hand delivery to the Authority and the Contractor; except, where a temporary restraining order is sought, the Commission may give notice of the hearing date, time and place to the Authority, Contractor and any affected subcontractor by telephone.

(vii) In the Enforcement Procedure proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.

**(b) Commission's Decision.** The Commission shall render a decision within 20 days of the date that the hearing on a Request is completed; provided that where a temporary restraining order is sought, the Commission shall render a decision not later than 24 hours after the hearing on the motion. The Commission shall send the decision by certified or registered mail to the Authority, the Contractor and the subcontractor, if any.

(i) The Commission may enter a default award against any party who fails to appear at the hearing; provided said party received actual notice of the hearing. In a proceeding seeking a default award against a party other than the Contractor, the Contractor shall provide proof of service on the party as required by this Article. If the Contractor fails to provide proof of service, the Contractor shall pay \$2,500 as liquidated damages to the Authority, provided that no such damages shall be assessed if the Contractor demonstrates that it made good faith efforts to serve the party. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

(ii) Except as otherwise provided in this Section 1, the Commission shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agreement, or to negotiate new agreements or provisions between the parties.

(iii) The inquiry of the Commission shall be restricted to the particular controversy that gave rise to the request for the Enforcement Procedure. A decision of the Commission issued hereunder shall be final and binding upon the Authority, Contractor, and subcontractors, if any, sent by mail to the Authority, the Contractor and the subcontractor, if any. The losing party shall pay the Commission's fees and related costs of the Enforcement Procedure. If a subcontractor is the losing party and fails to pay said fees within 30 days of the decision, the Contractor shall pay the fees. Each party shall pay its own attorneys' fees provided that fees may be awarded to the prevailing party if the Commission finds that the Request was frivolous or that the Enforcement Procedure action was otherwise instituted or litigated in bad faith. Judgment upon the Commission's decision may be entered in any court of competent jurisdiction.

**(c) Remedies and Sanctions.** Except as may otherwise be expressly provided herein, the Commission may impose only the remedies and sanctions set forth below and only against the non-compliant party(ies):

(i) Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the Contractor's failure to make Good Faith Efforts, and/or to require Contractor and/or its subcontractors to make such Good Faith Efforts, including, but not limited to, orders enjoining the Contractor from recruiting, screening or hiring (through new hires, transfers or otherwise) any person for employment at the Premises pending resolution of the alleged deficiency(ies) in the Hiring Plan or Contractor's implementation of the Workforce Goals.

(ii) Require the Contractor or Subcontractors to refrain from entering into new contracts related to work related to the Agreement, or from granting extensions or other modifications to existing contracts related to the Agreement, other than those minor modifications or extensions necessary to enable completion of the work covered by the existing contract, with any non-compliant subcontractor until such subcontractor

provides assurances satisfactory to the Authority and the Contractor of future Good Faith Efforts to comply with the Workforce Goals.

(iii) Direct the Contractor or subcontractor to cancel, terminate, suspend or cause to be canceled, terminated or suspended, any contract or lease or portion(s) thereof for failure of the subcontractor to make Good Faith Efforts to comply with the Workforce Goals, provided, however that Subcontracts may be continued upon the condition that a program for future compliance is approved by the Authority.

(iv) If the Contractor or subcontractor is found to be in willful breach of its obligations to make Good Faith Efforts to achieve the Workforce Goals, impose financial penalties not to exceed \$50,000 or 10 percent of the total monetary consideration contemplated by the Agreement, whichever is less, for each such breach on the party responsible for the willful breach; provided, however, no penalty shall be imposed pursuant to this paragraph for the first willful breach unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. The Contractor or subcontractor may impose penalties for subsequent willful breaches whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

(v) Direct that the Contractor or subcontractor produce and provide to the Authority any records, data or reports that are necessary to determine if a violation has occurred and/or to monitor the performance of the Contractor or Subcontractor.

(vi) Issue such other relief deemed necessary to ensure that the Hiring Plan is written and implemented, and that Contractor makes Good Faith Efforts to meet its Workforce Goals, including requiring the inclusion or exclusion of specific terms or provisions in the Hiring Plan based on a determination that the term(s) added or removed further the requirements and objectives of this Section 1.

(d) Delays due to enforcement. If Contractor does not timely perform its obligations under the Agreement with the Authority because of a Commission's order against a party other than the Contractor, such order shall be deemed an event of Force Majeure, and the time for any performance by the Contractor shall be extended as provided therein; provided, however, that Contractor shall make good faith efforts to minimize any delays.

(e) Exculpatory clause. The Contractor and its subcontractors hereby forever waive and release any and all claims against the Authority for Losses arising under or related to this Section 1.

(f) California law applies. California law, including the California Arbitration Act, Code of Civil Procedure §§1280 through 1294.2, shall govern all the Enforcement Procedure proceedings.

(g) Designation of agent for service. Not later than five (5) days after the execution of this Agreement, the Contractor shall designate a person or business, residing or located in the City and County of San Francisco, as its agent for service of a Request and all notices provided for herein. If the Contractor has an office located in San Francisco, it may designate itself as agent for service. The designation shall be served on

**1.10. Relationship to Other Employment Agreements.** Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce-training agreements or interfere with consent decrees, collective bargaining agreements or existing employment contracts. In the case of collective bargaining agreements, Contractor will take primary responsibility for integrating the requirements of Contractor's Workforce Goals with any such collective bargaining agreements. As necessary, Contractor will attempt to negotiate equivalent first source hiring obligations with relevant unions.

## **APPENDIX B PROJECT BUDGET**

The total amount payable under this Agreement shall not exceed seven hundred eighty thousand dollars (\$780,000). The annual budget for each parcel identified in Exhibits 1 and 2 and at the Level of Service identified in Appendix A, "Scope of Services" is stated below:

The following parcels are designated for Level  
of Service 1:

Parcel/Parcel Number

1	\$30,855
1A	\$7,524
2	\$19,107
3	\$7,870
13	\$48,775
15	\$116,704
24	\$8,176
Quarters 61	\$3,029
Subtotal Level 1 Services	\$242,040

The following parcels are designated for Level  
of Service 2:

Parcel/Parcel Number

Quarters 1	\$6,020
Quarters 2-7	\$15,493
5	\$4,327
10	\$24,767
14	\$27,502
16	\$18,110
Subtotal Budget Level 2 Services	\$96,219

The following are designated for  
Level of Service 3:

Parcel/Parcel Below 1-7	\$3,376
4	\$1,296
6	\$7,803
6B	\$3,652
7	\$17,933
8	\$13,265
12	\$5,112
17	\$3,545
18	\$1,701
18B	\$4,617
19	\$8,973
22	\$1,909
23	4,362
25	\$2,019
27	\$1,913
Subtotal Budget Level 2 Services	\$81,476

ROUTINE ADJUNCT WORK ITEMS

Item	Description
1	Firebreaks

2	Sea Wall (outer)	
3	Sea Wall (inner)	
4	Garbage & Tourist Stop	\$40,233
5	Garbage Cans on TI	\$11,063
6	Poison Oak	\$5,531
7	Annual Planting/Maintenance	\$12,359
8	Disease & Insect Control	\$3,215
9	Storm Damage Clean-up	\$1,337
	Subtotal Routine Adjunct Work Items	\$20,559
		\$1,675
	SPECIAL ADJUNCT WORK ITEMS	\$26,794
10	Reservoir Maintenance	\$122,766
11	Pump Station Maintenance	
12	Parcel 21	
13	Parcel 21A	
14	Parcel 27A	\$16,712
	Subtotal Special Adjunct Work Items	\$4,387
1		\$11,308
		\$17,169
		\$7,341
		\$179,683

## **EXHIBIT 3: LANDSCAPE MAINTENANCE SPECIFICATIONS FOR TREASURE ISLAND AND YERBA BUENA ISLAND**

### **Level 1 Services**

**Turf Grass Mowing and Associated Cleanup:** All turf areas shall be maintained in a manner that promotes proper turf health and a neat and attractive appearance. Turf grass areas shall be mowed once per week throughout the growing season, and then twice per month from November 15 through March 1<sup>st</sup>. Turf grass height shall be maintained between 2 inches and 3.5 inches at all times. Mower blades shall be sharp and provide a clean and even cut. Prior to mowing, all trash, papers and other debris shall be removed from turf areas. Surface imperfections such as gopher mounds shall be leveled out. Rubicon shall repair and or replace all items damaged as a result of any Rubicon mowing operation. All edges along curbs, sidewalks, roadways, other paved areas, and around light poles, hydrants, light guards, and signs shall be trimmed once per week. Tree wells shall be maintained around all trees and large shrubs growing in turf areas. A weed control program shall be implemented to achieve turf areas free of broadleaf weeds and other targeted weeds. Rubicon shall recycle and reuse waste plant material to the greatest extent possible.

**Annual & Perennial Color Plants:** Annual color shall be planted in specified areas as directed by the Mayor's Treasure Island Office Contracting Officer (hereinafter called the "Facilities Manager"). Planting shall occur three times per year on September 30<sup>th</sup>, March 15<sup>th</sup>, and June 30th. Plant beds shall be maintained at all times to insure good plant health and appearance. Planting beds shall be dressed with fine, uniform organic compost. It is estimated that 1,500 flats of annuals (500 flats per planting session) and some perennials will be required. Once planting areas have been designated, Rubicon shall present to the Facilities Manager a schedule that includes the number and types of plants to be used for each planting session and the design patterns that will be achieved.

**Trees and Shrubs:** Trees and shrubs shall be pruned as required to encourage proper health, to maintain a pleasing appearance and to prevent interference with pedestrian and vehicular traffic. Trees and shrubs shall be treated as required to prevent disease, fungus and insect damage. Trees shall be pruned to keep their canopies from extending into pathways. All tree pruning shall be limited to heights under twelve (12') feet. Pruning shall be performed to:

- Prevent growth in front of windows, over entranceways and walkways, and in locations where visibility at street intersections would be obstructed.
- Remove dead, diseased or damaged growth.
- Evenly form or balance trees and shrubs to maintain their established shape and appearance. Informal hedges or screen plantings shall not be converted to formal shapes.
- Remove tree branches up to eight (8") inches in diameter and within twelve (12') feet of the ground if such branches extend over pathways or roads.
- Extensive pruning and "cut back" activities shall be accomplished in the winter to give trees and shrubs sufficient time to recover before the growing season.
- Ivy and ground cover shall be kept to a minimum of eight (8") inches from shrubs and trees.
- Shrub beds shall be kept free of weeds, debris, sucker growth, and dead plant material.

- A three (3") inch layer of mulch of uniform size with even appearance (with nothing over 3" in size) will be installed over bare soil in shrub areas to discourage weeds and improve soil.

Treatment of any abnormal or excessively large infestation of insects or disease organisms that could cause extensive damage to individual mature trees, or to a great number of trees, shall be performed as directed in a timely manner, but only at an additional cost.

**Fertilization, Weed Control, Fungicide and Insecticides:** Fertilizer shall be applied up to four times per year as required to promote the proper health and appearance of turf, trees, shrubs, groundcover and color areas. A complete fertilizer with an analysis of 16-6-8 shall be applied at a rate of 275 pounds per acre per application. Chem-Lawn or other commercial liquid fertilizer applications are not acceptable. Herbicides, fungicides, insecticides, and lime shall be applied as necessary to maintain superior plant health and appearance and in accord with the City and County of San Francisco's Pest Management Program.

**Irrigation:** Irrigation shall be performed in a manner that promotes proper plant health and growth. Irrigation shall include watering of lawns, shrubs, trees, planting beds, ground cover, and containerized plants. Rubicon shall provide back-flow prevention devices approved by the San Francisco Department of Public Works on all hoses used for watering, and on all connections made to fire hydrants.

At the Facilities manager's sole discretion, Rubicon shall be responsible for replacing or repairing damage caused to fire hydrants through Rubicon's use of any unapproved back-flow devices. Rubicon shall also repair or replace, at the Facilities Manager's sole discretion, damage caused by Rubicon to sprinkler heads, valves, piping, fire hydrants, or any other equipment. Rubicon shall not be responsible for replacing or repairing any irrigation system components that wear out or fail as a result of normal use, unless directed to do so under a separate additional work agreement. The Facilities Manager shall provide water for irrigation and electricity for irrigation controllers, and shall be responsible for maintaining and repairing any underground piping located more than one foot from any sprinkler head.

**Ground Cover:** Ground covers shall be kept free of noticeable weeds and debris. Ground covers shall be trimmed as necessary to maintain boundaries and to keep new growth away from trees, shrubs, utilities, etc.

**Weed control in Paved Areas:** Weeds shall be removed from all asphalt and other paved areas. Herbicides shall be applied to prevent re-growth.

**Policing, Debris Removal and Storm Damage Cleanup:** All maintenance areas shall be policed at least twice per week to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as it is possible to divert workers from normal routines.

**Playgrounds, Sandboxes, Ball fields, and Tennis Courts:** Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a week to remove litter and refuse. Ball fields will be dragged once per month during winter and once per week during playing season.

<u>Level 1 Task</u>	<u>Frequency/Year</u>
Policing	104
Mowing	43
Edging/Trimming	43
Fertilization	as needed
Shrub and Tree Maintenance	as needed
Disease and Insect Control	as needed
Weed Control, Lawns	3 times plus spot spraying as needed
Storm Damage Cleanup	as needed
General Debris Pickup	as needed
Hand Irrigation	72

These frequencies are average projected amounts of service that will be required to provide the standard of maintenance described above. Depending in overall weather patterns and associated plant responses some tasks may be performed more times than shown and others less times than shown.

## Level 2 Services

**Turf Grass Mowing and Associated Cleanup:** Turf areas shall be mowed an average of two times per month. Turf grass height shall be maintained between 2 inches and 4 inches at all times. Mower blades shall be sharp and provide a clean and even cut. Mower blades shall be sharp and provide a clean and even cut. Prior to mowing, all trash, papers, and other debris shall be removed from turf areas. Surface imperfections such as gopher mounds shall be leveled out. Rubicon shall repair or replace any items damaged as a result of any Rubicon mowing operation. All edges along curbs, sidewalks, roadways, and other paved areas, and around light poles, hydrants, light guards, and signs shall be trimmed once per month. Tree wells shall be maintained around all trees and large shrubs growing in lawn and turf areas. All clippings shall be cleared from walkways, roadways, and other paved areas.

**Trees and Shrubs:** All trees and shrubs shall be pruned to provide safe passage, maintain a healthy and pleasing appearance, and prevent interference with pedestrian and vehicular traffic. Trees and shrubs shall be treated as necessary to prevent disease, fungus, and insect damage. Treatment of any abnormal and large infestation of insects or disease organisms that cause extensive damage to mature trees, or to a great number of trees, shall be performed as directed at an additional cost. Shrub beds shall be kept free of weeds, debris, sucker growth, and dead plant material.

**Irrigation:** Minimum irrigation shall be performed in a manner that promotes good appearance of landscaped areas. Irrigation shall include the watering of lawns, shrubs, tree, ground cover and containerized plants. Rubicon shall provide back-flow prevention devices approved by the San Francisco Department of Public Works on all hoses that are used for watering and all connections made to fire hydrants.

At the Facilities Manager's sole discretion, Rubicon shall be responsible for replacing or repairing damage caused to fire hydrants through Rubicon's use of any unapproved back-flow devices.

Rubicon shall also repair or replace, at the Facilities Manager's sole discretion, damage caused by Rubicon to sprinkler heads, valves, piping, fire hydrants, or any other equipment. Rubicon shall not be responsible for replacing or repairing any irrigation system components that wear out or fail as a result of normal use, unless directed to do so under a separate additional work agreement. The Facilities Manager shall provide water for irrigation and electricity for irrigation controllers, and shall be responsible for maintaining and repairing any underground piping located more than one foot from any sprinkler head.

**Weed Control In Paved Areas:** Weeds shall be removed from all asphalt and other paved areas. Herbicides shall be applied to prevent re-growth.

**Ground Cover:** Ground covers shall be kept free of noticeable weeds and debris. Ground covers shall be trimmed as necessary to maintain boundaries and to keep new growth away from trees, shrubs, utilities, etc.

**Policing, Debris Removal, and Storm Damage Cleanup:** All maintenance areas shall be policed at least twice per month to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

**Playground, Sandboxes, Ball Fields, and Tennis Courts:** Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a week to remove foreign objects.

<u>Level 2 Task</u>	<u>Frequency / Year</u>
Policing	24
Mowing	24
Edging/Trimming	24
Fertilization	0
Shrub and Tree maintenance	as needed
Disease and Insect Control	as needed
Weed Control, Lawns	0
Storm Damage Cleanup	as needed
Hand Irrigation	36

These frequencies are average projected amounts of service that we feel will be required to provide the standard of maintenance described above. Depending on overall weather patterns and associated plant responses we may perform some tasks more times than shown and others less times than shown.

### Level 3 Services

**Mowing and Associated Cleanup:** Grass and weeds shall be cut 16 times per year. Prior to mowing, all trash and debris, including leaves, paper and other objects within the maintenance area shall be removed. Grass/weeds shall be maintained at a uniform height Of not less than 2" and not more than 5".

**Trees and Shrubs:** All trees and shrubs shall be pruned as required to encourage proper health and to maintain a pleasing appearance. Any extensive pruning or "cut back" shall be accomplished in the winter or during the dormant season. Ivy and ground cover shall be kept a minimum of eight inches (8") from shrubs and trees. Shrub beds shall be kept free of weeds, debris, sucker growth, and dead plant material.

**Ground Cover:** Ground covers shall be kept free of noticeable weeds and debris. Ground covers shall be trimmed as necessary to maintain boundaries and to keep new growth away from trees, shrubs, utilities, etc.

**Weed Control In Paved Areas:** Weeds shall be removed from all asphalt and other paved areas four times per year. Herbicides shall b applied to prevent re-growth.

**Policing, Debris Removal, and Storm Damage Cleanup:** All maintenance areas shall be policed at least twice per month to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

**Playgrounds, Sandboxes, Ball Fields, and Tennis Courts:** Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a month to remove foreign objects.

**Irrigation:** Level 3 areas shall not include any irrigation

#### Miscellaneous Specifications

**Firebreak Requirements for Yerba Buena Island:** Certain areas on Yerba Buena Island shall be maintained as firebreaks in the following manner as directed by Peter J. Shembri, Lieutenant Division of Fire Prevention and Investigation and Michael T. Hennigan, Captain, San Francisco Fire Department.

All buildings under the care and management of the City of San Francisco shall have the areas around them cleared to a distance of a minimum of 30 feet. All roadways on City property shall have the areas on either side of them cleared to a distance of at minimum of 10 feet. The cleared areas shall be kept free of combustible materials such as dry weeds, shrubs, trash, and fallen debris from trees. Normal leaf and pine needle accumulation shall not be removed. Weeds shall be cut or mowed to a maximum height vegetation remains green throughout the year and presents little or no fire hazard shall be left alone. Any vegetation obstructing roadways or growing against buildings shall removed as directed by the Facilities Manager. Removal of any trees over 4 inches in diameter or over 12 feet high within the fire break areas shall only be performed as additional work under a separate agreement.

**Mowing for Fire Protection at Housing Areas on Treasure Island:** Mowing of grass and weeds in housing arcas designated as H-1,H-2, and H-3 on Treasure Island, shall be an indefinite quantity item, performed only when specifically directed to do so by the Facilities Manager. For each order, the Facilities Manager shall specify in writing what areas shall be mowed and when they shall be mowed. The Facilities Manager may choose to order mowing for fire protection with or without grass/weed pick-up and removal. Separate unit prices for these options shall be

provided. Rubicon shall be prepared to perform mowing work as often and as extensively as is requested by the Facilities Manager.

**Sea Wall Requirements:** The sea wall is defined as the flat area adjacent to the rock revetment that comprises the perimeter of Treasure Island. From the end of Palm Avenue at 9<sup>th</sup> Street the sea wall runs around the housing area and returns to the harbor behind Building 1. Weeds in this area shall be kept at a height of 4 inches or less by beams of mechanical and chemical control. Trash shall be removed once per month. Any debris that occurs in other areas along the sea wall shall be the responsibility of others unless negotiated as extra work separate from this agreement.

**Storm Drains Requirements for Both Islands:** Storm drains and V ditches shall be cleaned as often as necessary during the rainy season in order to keep them clear of debris.

**Garbage Cans And Tourist Stop at Front Gate:** Garbage cans shall be emptied 3 times per week. The tourist parking area and sidewalk at the front gate shall be swept or blown Monday through Friday.

**Garbage Cans On Treasure Island:** Garbage shall be removed from trashcans at designated sites on Treasure Island twice per week. The number of cans serviced shall not exceed twelve, unless otherwise directed by the Facilities Manager under a separate agreement. Liners shall be replaced in trashcans as necessary.

**Poison Oak:** Wherever located, poison oak shall be sprayed with herbicide twice per year. An aggressive effort will be made to locate and eradicate poison oak near housing, playgrounds, and other high traffic areas.

**Reservoir and Pump Station Maintenance on Yerba Buena Island:** Reservoir roofs shall be cleaned of debris once per week. Debris and vegetation shall be cleared from reservoir and pump station walls and within fence lines as needed to assure access to facilities and prevent any invasive damage to structures.

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**TREASURE ISLAND DEVELOPMENT AUTHORITY**  
**City and County of San Francisco**

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**Agenda Item No. 9**

**April 11, 2001**

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**Subject:** Resolution authorizing the Executive Director to extend the sublease with Mr. Rex Liu for the Photo Booth on a month-to-month basis not to exceed one year.

**Contact/Phone:** London Breed, Development Specialist 274-0665

**SUMMARY OF PROPOSED ACTION**

The resolution authorizes the Executive Director to extend the month-to-month sublease with Mr. Rex Liu for the use on the Photo Booth at the entrance of Treasure Island for an additional one-year term.

**DISCUSSION**

The sublease provides for use of the Photo Booth by Mr. Rex Liu as a retail shop for film, cameras, picture-taking, souvenirs (limited), and for no other purpose. The sublease will continue to be on a month-to-month basis for a one-year term, expiring on April 15, 2002. The monthly base rent is \$500 for the use of the space. The Photo Booth is located near the front gate of Treasure Island serving tourists and visitors.

**RECOMMENDATION**

Staff recommends approval of the resolution authorizing the Executive Director to continue the sublease with Mr. Rex Liu on a month-to-month basis for up to one year. Further continuation of the Sublease beyond April 15, 2001 would require additional Authority approval.

**EXHIBITS**

Original Sublease



**AUTHORIZING THE EXECUTIVE DIRECTOR TO CONTINUE THE  
SUBLEASE WITH MR. REX LIU ON A MONTH-TO-MONTH BASIS UP TO  
ONE YEAR FOR THE USE AND OPERATION OF THE PHOTO BOOTH ON  
TREASURE ISLAND.**

WHEREAS, former Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, the Base was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority as a redevelopment agency under the California Redevelopment Law with authority over the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property; and

WHEREAS, The Tidelands Trust prohibits the sale of trust property into private ownership, generally requires that Tidelands Trust property be accessible to the public

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and encourages public-oriented uses of Tidelands Trust property that, among other things, attract people to the waterfront, promote public recreation, protect habitat and preserve open space; and

WHEREAS, According to the Sections 10 and 12 of the Authority's Rules and Procedures for Transfer of Real Property, adopted March 11, 1998, the Executive Director may enter into month-to-month or shorter term leases, licenses or subleases for a cumulative term of no more than six months without competitive bidding or the separate approval of the Authority; and

WHEREAS, the Photo Booth is an amenity to Treasure Island, tourists, and visitors; and

WHEREAS, On October 15, 1999, the Executive Director entered into a month-to-month sublease with Mr. Rex Liu for use of the Photo as a retail shop for film, camera, picture-taking, and souvenirs at \$500 per month as the base rent; and

WHEREAS, On April 12, 2000, the Authority approved continuation of the sublease for an additional six months; and

WHEREAS, Mr. Liu wishes to continue to use the Photo Booth until April 15, 2002 for a retail shop; now therefore be it

RESOLVED, That the Authority hereby authorizes the Executive Director to continue the term of the sublease on a month-to-month basis until April 15, 2002; and be it

FURTHER RESOLVED, That Authority approval shall be required to further extend the term of the sublease beyond April 15, 2002.

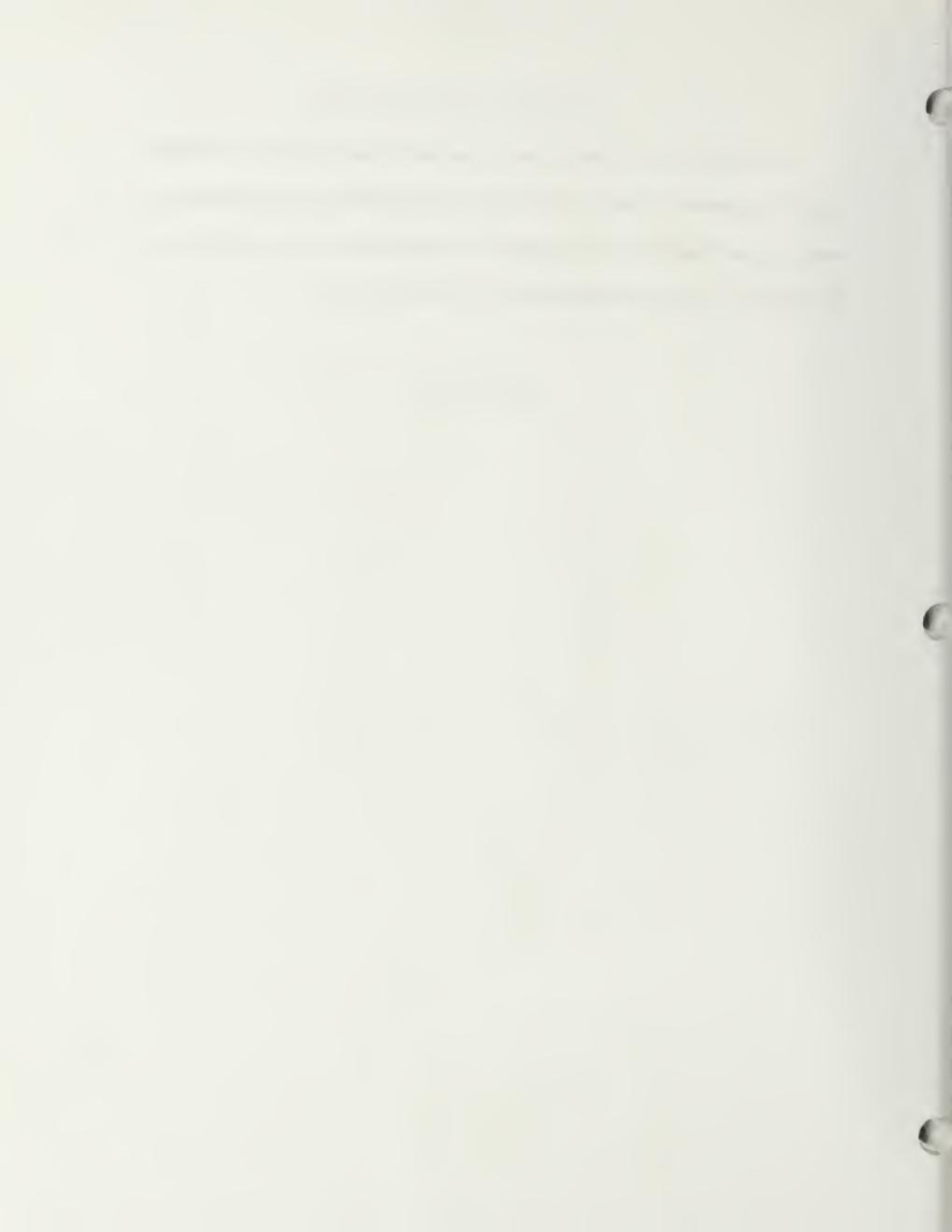


CERTIFICATE OF SECRETARY

*I hereby certify that I am the duly elected and acting secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at the Properly noticed meeting on April 11, 2001.*

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John Elberling



 RECYCLED

80000 SERIES  
10% P.C.W.



**SUBLEASE**

**between**

**THE TREASURE ISLAND DEVELOPMENT AUTHORITY**

**as Sublandlord**

**and**

**Rex Lieu  
as Subtenant**

**For the Sublease of**

**The Photo Booth at Treasure Island Naval Station  
San Francisco, California**

**October 15, 1999**

## TREASURE ISLAND SUBLEASE

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**LIST OF EXHIBITS:**

EXHIBIT A -- Master Lease  
EXHIBIT B -- Drawing of Premises  
EXHIBIT C -- Seismic Report  
EXHIBIT D -- Structural Report  
EXHIBIT E -- Rules and Regulations  
EXHIBIT F -- Utilities

## TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated as of this October 15, 1999, is by and between the Treasure Island Development Authority ("Sublandlord") and Rex Liu ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease, dated September 4, 1998 (the "Master Lease"), a copy of which is attached hereto as Exhibit A, under which the Master Landlord leased to Sublandlord The Photo Booth (the "Building") located on Naval Station Treasure Island (the "Property").

B. Subtenant desires to sublet The Photo Booth more particularly shown on the map attached hereto as Exhibit B (the "Premises") from Sublandlord and Sublandlord is willing to sublet the Premises to Subtenant on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

### 1. PREMISES

1.1. **Subleased Premises.** Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises.

#### 1.2. **As Is Condition of Premises.**

(a) **Inspection of Premises.** Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them, ("Subtenant's Agents") of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic Report and the Structural Report referenced in Section 1.2(c) below and the Joint Inspection Report referenced in Section 6 of the Master Lease.

(b) **As Is; Disclaimer of Representations.** Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises ("Laws") governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord, the City and County of San Francisco ("City"), nor any of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees or contractors, or their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below) (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use of Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) **Seismic Report and Structural Report.** Without limiting Section 1.2 (b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions,*" prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco, (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils and the Building and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that the Building and any other structures or improvements located on or about the Premises, may fail structurally and collapse.

Subtenant further expressly acknowledges for itself and Subtenant's Agents that it

has received and read that certain *Treasure Island Study, Seismic Evaluation of Building 180* prepared by SOH & Associates, a copy of which is attached hereto as Exhibit D (the "Structural Report").

## 2. COMPLIANCE WITH MASTER LEASE

2.1. **Incorporation by Reference.** All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein

2.2. **Conflict.** If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then the terms of the Master Lease shall govern.

2.3. **Compliance with Master Lease.** Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord.

2.4. **Automatic Termination.** If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

## 3. TERM

3.1. **Term of Sublease.** The term of this Sublease shall commence on October 15, 1999 (the "Commencement Date") and continue on a month-to-month basis until either party elects, in its respective sole and absolute discretion, to terminate this Sublease by giving the other party at least thirty (30) days written notice, unless sooner terminated pursuant to the terms of this Sublease.

## 4. RENT

4.1. **Base Rent.** Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord Five Hundred Dollars (\$500.00) per month (the "Base Rent"). Base Rent shall be paid to the Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Base Rent shall be payable on or before the first day of each month, in advance, at the Notice Address of Sublandlord provided in Section 20.1 hereof or such other place as Sublandlord may designate in writing. If the Commencement Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than

the last day of a calendar month, then the monthly payment of Rent for such fractional month shall prorated based on a thirty (30) day month.

**4.2. Additional Charges.** In addition to Base Rent, Subtenant shall pay any and all real property taxes, possessory interest taxes and other costs, impositions and expenses related to the Premises as provided in Section 4 hereof, plus all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all late charges and default interest attributable to late payments and/or defaults of Subtenant hereunder and all utility charges (together, the "Additional Charges"). Together, Base Rent and Additional Charges shall hereinafter be referred to as the "Rent".

**4.3. Late Charge.** If Subtenant fails to pay any Rent within ten(10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

**4.4. Default Interest.** If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of the greater of the interest rate in effect which has been established by the Secretary of Treasury pursuant to Public Law, as described in Section 33 of the Master Lease. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which would have been fully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

## **5. TAXES, ASSESSMENTS AND OTHER EXPENSES**

### **5.1. Taxes and Assessments, Licenses, Permit Fees and Liens.**

**(a) Payment Responsibility.** Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly

from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Subtenant recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

5.2. **Other Expenses.** This is a "triple net" Sublease. Accordingly, Subtenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Alterations permitted thereon, including, without limitation, the cost of any utilities, maintenance or services necessary for Subtenant's use.

5.3. **Evidence of Payment.** Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate billings and/or evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

## 6. USE; COVENANTS TO PROTECT PREMISES

6.1. **Subtenant's Permitted Use.** Subtenant may use the Premises for retail shop for film, camera, picture-taking, souvenirs (limited), and for no other purpose. Subtenant may not park any vehicles outside the Premises, except to load merchandises.

6.2. **Subtenant's Access to the Premises.** As provided in Section 30 of the Master Lease, Subtenant will have access to the Premises on a 24-hour, seven-days-a-week basis, provided however, Subtenant shall coordinate such access with the local representative of Master Landlord.

6.3. **Rules and Regulations.** Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as Exhibit E, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and

regulations may be prescribed by Master Landlord or Sublandlord from time to time and which are provided to Subtenant in advance of the enforcement thereof.

**6.4. Easements.** This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"), provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities. To the best knowledge of the Mayor's Treasure Island Project Office, there are no existing Additional Easements or other encumbrances which would materially interfere with Subtenant's use of the Premises.

**6.5. No Interference with Navy Operations.** Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over the Subtenant's use of the Premises in the event of any conflict, provided, however, ~~Master Landlord, Sublandlord and Tenant shall use their best efforts to minimize any disruption of Subtenant's operation.~~

**6.6. No Unlawful Uses, Nuisances or Waste.** Without limiting the foregoing, Tenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Tenant shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Tenant shall not conduct any business, place any sales display, or advertise in any manner in areas outside the Premises or on or about the Property.

## **7. ALTERATIONS**

**7.1. Other Alterations.** Subtenant shall not construct, install, make or permit to be

made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any permitted Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of such construction at all times.

**7.2. Historic Properties.** Without limiting the generality of the foregoing, Subtenant acknowledges and agrees that, pursuant to Section 15 of the Master Lease, no Alterations may be made to the Building (i) which will affect the historic characteristics of the Building or modify the appearance of the exterior of the Building without Master Landlord's and Sublandlord's prior written consent or (ii) if such Alterations would preclude qualifying the Building for inclusion on the National Register for Historic places.

**7.3. Ownership of Alterations.** Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of Section 7.1 above shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 18 hereof, unless Sublandlord, at its sole option and without limiting any of the provisions of Section 7.1 above, requires as a condition to approval of any such Alterations that such Alterations remain on the Premises following the expiration or termination of this Sublease or unless Sublandlord as a condition of such approval reserves the right to elect by notice to Subtenant not less than fifteen (15) days prior to the end of the Term to have such Alterations remain on the Premises.

**7.4. Subtenant's Personal Property.** All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises, including , without limitation, any cable car vehicles, (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and may be removed by it subject to the provisions of Section 18 hereof. Subtenant shall be solely responsible for providing any security or other protection of or maintenance to Subtenant's Personal Property.

**7.5. Sublandlord's Alterations of the Building and Building Systems.** Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the Building or the Building Systems, provided that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for purposes stated herein.

## **8. REPAIRS AND MAINTENANCE**

**8.1. Subtenant Responsible for Maintenance and Repair.** Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.

**8.2. Utilities.** Sublandlord shall provide the basic building utilities and services ~~as set forth in Exhibit F~~ (the "Standard Utilities and Services") to the Premises, subject to the terms and conditions contained therein. Subtenant shall be responsible for furnishing, at its sole costs, any utilities or services other than or in excess of the Standard Utilities and Services that Subtenant may need for its use of the Premises. Subtenant shall pay as Additional Charges, without set off or counterclaim, all amounts due and owing for such Standard Utilities and Services at the rates provided in and as otherwise set forth in Exhibit F.

**8.3. Floor Load.** Without Sublandlord's prior written consent, which Sublandlord may give or refuse in its sole discretion, Subtenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Building. If Sublandlord consents to the placement or installation of any such machine or equipment in the Premises, Subtenant at its sole expense shall reinforce the floor of the Premises, pursuant to plans and specifications approved by Sublandlord and otherwise in compliance with Section 7.1 [Alterations and Construction] to the extent necessary to assure that no damage to the Premises or the Building or weakening of any structural support will be occasioned thereby.

**8.4. Janitorial Services.** Subtenant shall provide all janitorial services for the

Premises.

**8.5. Pest Control.** Subtenant shall provide and pay for all pest control services required within the Premises, and shall keep the Premises free of all pests at all times.

**8.6. Trash.** Tenant will be responsible for the maintenance of trash in the area.

**8.7. No Right to Repair and Deduct.** Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

## **9. LIENS**

Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

## **10. COMPLIANCE WITH LAWS**

**10.1. Compliance with Laws.** Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary, provided however, that Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises, unless the requirement

for such changes is imposed as a result of any Alterations made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 *et seq.* and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Sublease below). No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation. Without limiting the generality of the foregoing, Subtenant shall comply with any and all fire codes, Department of Public Health regulations or any other Laws specifically related to the storage and possible leakage of gasoline from the tanks of or otherwise related to the cable car vehicles.

#### **10.2. Regulatory Approvals.**

(a) **Responsible Party.** Subtenant understands and agrees that Subtenant's use of the Premises and construction of Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") the Sublandlord and City, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties") against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

**10.3. Compliance with Sublandlord's Risk Management Requirements.** Subtenant shall not do anything, or permit anything to be done, in or about the Premises or any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially

reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

## 11. ENCUMBRANCES

**11.1. Encumbrance By Subtenant.** Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

## 12. DAMAGE OR DESTRUCTION

**12.1. Damage or Destruction to the Premises.** In the case of damage to or destruction of the Premises by earthquake, fire or any other casualty, not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, whether insured or uninsured, which prevents Subtenant from operating the Premises for the purposes stated herein and the cost of repairing such damage exceeds Ten Thousand Dollars (\$10,000), either Party may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 18 (except for damage caused by the casualty pursuant to which the Sublease may be terminated under this Section 12.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. If neither Party terminates this Sublease as provided in this Section 12.1, Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of Section 7.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of such a casualty.

**12.2. No Abatement in Rent.** In the event of any damage or destruction to the Premises, and if neither party terminates this Sublease as provided in Section 12.1 above, there shall be no abatement in the Rent payable hereunder.

**12.3. Waiver.** The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

## **13. ASSIGNMENT AND SUBLetting**

**13.1. Restriction on Assignment and Subletting.** Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises, without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion.

## **14. DEFAULT; REMEDIES**

**14.1. Events of Default.** Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

(a) **Rent.** Any failure to pay Rent or other sums, including sums due for utilities, within five (5) days after such sums are due;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease, provided Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.

(c) **Vacation or Abandonment.** Any abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted.

**14.2. Remedies.** Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies

reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

## 11. ENCUMBRANCES

**11.1. Encumbrance By Subtenant.** Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

## 12. DAMAGE OR DESTRUCTION

**12.1. Damage or Destruction to the Premises.** In the case of damage to or destruction of the Premises by earthquake, fire or any other casualty, not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, whether insured or uninsured, which prevents Subtenant from operating the Premises for the purposes stated herein and the cost of repairing such damage exceeds Ten Thousand Dollars (\$10,000), either Party may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 18 (except for damage caused by the casualty pursuant to which the Sublease may be terminated under this Section 12.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. If neither Party terminates this Sublease as provided in this Section 12.1, Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of Section 7.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of such a casualty.

**12.2. No Abatement in Rent.** In the event of any damage or destruction to the Premises, and if neither party terminates this Sublease as provided in Section 12.1 above, there shall be no abatement in the Rent payable hereunder.

**12.3. Waiver.** The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

## **13. ASSIGNMENT AND SUBLetting**

**13.1. Restriction on Assignment and Subletting.** Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises, without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion.

## **14. DEFAULT; REMEDIES**

**14.1. Events of Default.** Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

(a) **Rent.** Any failure to pay Rent or other sums, including sums due for utilities, within five (5) days after such sums are due;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease, provided Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.

(c) **Vacation or Abandonment.** Any abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted.

**14.2. Remedies.** Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies

provided by law California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

(b) **Appointment of Receiver.** The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.

**14.3. Sublandlord's Right to Cure Subtenant's Defaults.** If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's failure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's obligations under any other provisions of this Sublease or any other rights or remedies of Sublandlord on account of such Event of Default.

## 15. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION

**15.1. Release and Waiver of Claims.** Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Building due to an earthquake or subsidence, except only to the extent such Losses are caused exclusively by the gross negligence or willful misconduct of the Indemnified Parties (except as provided in Section 15.1(e) below). Without limiting the generality of the foregoing:

(a) Subtenant expressly acknowledges and agrees that the Rent payable

hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties , and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.

(b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.

(c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES , WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.

(d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses and any and all claims , demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance form the Indemnified Parties under federal and state relocation assistance laws.

(e) Without limiting any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on

account of or in any way be connected with the Indemnified Parties decision to Sublease the Premises to the Subtenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.

(f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 15.1.

(g) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(h) Subtenant had made such investigation of the facts pertaining to these waivers and releases it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(i) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Subtenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

**15.2. Subtenant's Indemnity.** Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses, expressly including but not limited to, any Losses arising out of a partial or complete collapse of the Building due to an earthquake or subsidence, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Subtenant's Invitees, (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this

Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) the condition of the Premises, including the Building, (f) any construction or other work undertaken by Subtenant on or about the Premises whether before or during the Term of this Sublease; or (g) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, or of any trespassers, in, on or about the Premises or any Alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. Notwithstanding the foregoing, Subtenant's obligations to indemnify the Indemnified Parties under this Section 15.2 shall remain in full force and effect regardless of whether or not the Indemnified Parties' decision to Sublease the Premises to the Subtenant, given the seismic condition of the property, is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease. Notwithstanding anything contained herein, to the extent such Losses are not covered by insurance required herein and subject to Section 12.1 above, Subtenant shall have no obligation to repair, restore or reconstruct the Premises (or to pay for the same) in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty.

## 16. INSURANCE

**16.1. Subtenant's Insurance.** Subtenant shall procure and maintain throughout the Term of this Sublease and pay the cost thereof the following insurance:

(a) **Property Insurance.** Subtenant shall procure and maintain, at its own cost, a standard fire and extended coverage insurance policy insuring the Premises, including, without limitation, the Building and all fixtures, Alterations, furniture and equipment located thereon, in an amount not less than the full replacement value.

(b) **Public Liability and Other Insurance.** Subtenant shall at all times, at its cost, also maintain insurance for the mutual benefit of Sublandlord and Subtenant against:

(i) Claims for personal injury under a policy of commercial general

liability insurance, including without limitation, claims for bodily injury, property damage or employer's liability arising from earthquakes or subsidence, in an amount not less than \$5,000,000 combined single limit. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CG-00-01-11-88.

(ii) Worker's compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against Sublandlord, Subtenant, the Premises or any other Sublandlord property, in an amount not less than \$1,000,000 each accident.

(iii) Automobile liability insurance with limits not less than \$5,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Subtenant uses automobiles in connection with its use of the Premises. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CA-00-01-06-92.

**16.2. General Requirements.** All insurance provided for under this Sublease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by Sublandlord.

(a) Should any of the required insurance be provided under a claims-made form, Subtenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Sublease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Sublease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

(i) Cover Subtenant as the insured and the Sublandlord and the Master Landlord as additional insureds.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Sublease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the

coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to Sublandlord of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for Sublandlord set forth in the Basic Sublease Information.

**16.3. Proof of Insurance.** Subtenant shall deliver to Sublandlord certificates of insurance in form and with insurers satisfactory to Sublandlord, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon Sublandlord's request, and Subtenant shall provide Sublandlord with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. As to the insurance required pursuant to Section 16.1(b)(1) above, such certificate shall state, among other things, that such insurance coverage includes and shall cover Subtenant's indemnity obligations under Section 15.2 above. In the event Subtenant shall fail to procure such insurance, or to deliver such policies or certificates, Sublandlord may, at its option, procure the same for the account of Subtenant, and the cost thereof shall be paid to Sublandlord within five (5) days after delivery to Subtenant of bills therefor.

**16.4. No Limitation on Indemnities.** Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or any of Subtenant's other obligations or liabilities under this Sublease.

**16.5. Lapse of Insurance.** Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.

**16.6. Subtenant's Personal Property.** Subtenant shall be responsible, at its expense, for separately insuring Subtenant's Personal Property.

**16.7. Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, Sublandlord and Subtenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Subtenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Subtenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Sublandlord or any other party maintaining a policy of insurance covering the same loss, in

connection with any claim, loss or damage covered by such policy.

## 17. ACCESS BY SUBLANDLORD

### 17.1. Access to Premises by Sublandlord.

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.

17.2. **Access to Premises by Master Landlord.** Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

## 18. SURRENDER

18.1. **Surrender of the Premises.** Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 7.3 above). In addition, Subtenant shall, at its sole expense, repair any damage to the

Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises.

## 19. HAZARDOUS MATERIALS

**19.1. No Hazardous Materials.** Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without

limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Without limiting the foregoing, Subtenant acknowledges and agrees that it shall be bound by and will comply with the environmental protection provisions provided for in Section 13 of the Master Lease.

**19.2. Subtenant's Environmental Indemnity.** If Subtenant breaches any of its obligations contained in Section 19.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leaching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 15.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against all any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or the Property, Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

**19.3. Acknowledgment of Receipt of EBS and FOSL Reports.** Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of

Suitability to Lease ("FOSL") described in Section 7 of the Master Lease.

## 20. GENERAL PROVISIONS

**20.1. Notices.** Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid as follows:

Notice Address of Sublandlord

Treasure Island Development Authority  
Treasure Island Project Office  
410 Ave. of Palms  
Building 1, 2<sup>nd</sup> Floor  
Treasure Island  
Attn: Executive Director  
Fax No.: 415-274-0299

with a copy to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett PLace  
San Francisco, CA 94102-4682  
Attn: Michael S. Cohen  
Fax No.: (415) 554-4755

Notice Address of Subtenant:

Rex Liu  
888 O'Farrell Street  
San Francisco, CA 94107  
Attn: Rex Liu, President  
Fax No. 415-981-8433  
Tel No. 415-981-8239

Notice Address of Master Landlord: Commanding Officer (Code 24)  
Engineering Field Activity West  
Naval Facilities Engineering Command  
900 Commodore Drive  
San Bruno, California 94066

Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal

delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 20.1 and applicable Laws, shall be deemed receipt of such notice..

**20.2. Security Deposit.** Subtenant shall pay to Sublandlord upon execution of this Sublease a security deposit in the amount of One Thousand Dollar (\$1,000.00) as security for the faithful performance of all terms, covenants and conditions of this Sublease. Subtenant agrees that Sublandlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Subtenant, Subtenant's Agents or Subtenant's Invitees, or any failure of Subtenant to perform any other terms, covenants or conditions contained in this Sublease, without waiving any of Sublandlord's other rights and remedies hereunder or at Law or in equity. Should Sublandlord use any portion of the security deposit to cure any Event of Default by Subtenant hereunder, Subtenant shall immediately replenish the security deposit to the original amount, and Subtenant's failure to do so within five (5) days of Sublandlord's notice shall constitute a material Event of Default under this Sublease. Sublandlord's obligations with respect to the security deposit are solely that of debtor and not trustee. Sublandlord shall not be required to keep the security deposit separate from its general funds, and Subtenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Subtenant's liability for the performance of any of its obligations under this Sublease. To the extent that Sublandlord is not entitled to retain or apply the security deposit pursuant to this Section 20.3, Sublandlord shall return such security deposit to Sublandlord within forty-five (45) days of the termination of this Sublease.

**20.3. No Implied Waiver.** No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Rent during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.

**20.4. Amendments.** Neither this Sublease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

**20.5. Authority.** If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosure set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

**20.6. Joint and Several Obligations.** The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.

**20.7. Interpretation of Sublease.** The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

**20.8. Successors and Assigns.** Subject to the provisions of Section 13, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.

**20.9. Brokers.** Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

**20.10. Severability.** If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

**20.11. Governing Law.** This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.

**20.12. Entire Agreement.** This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein. Notwithstanding the foregoing, the Parties shall make a good faith effort to negotiate mutually acceptable changes to this Sublease, if any, within ninety (90) days of the date hereof, provided however, that such changes, if any, shall be subject to the approval of the Master Landlord.

**20.13. Attorneys' Fees.** In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees.

**20.14. Time of Essence.** Time is of the essence with respect to all provisions of this

Sublease in which a definite time for performance is specified.

**20.15. Cumulative Remedies.** All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

**20.16. Survival of Indemnities.** Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.

**20.17. Relationship of Parties.** Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

**20.18. Recording.** Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.

**20.19. Non-Liability of Indemnified Parties' officials, employees and Agents.** No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Agreement.

**20.20. No Discrimination.** Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.

**20.21. Counterparts.** This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**20.22. Master Landlord's Consent.** This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord

## **21. SPECIAL PROVISIONS**

**21.1. Signs.** Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Building or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.

**21.2. Public Transit Information.** Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Building and encouraging use of such facilities, all at Subtenant's sole expense.

### **21.3. Non-Discrimination.**

(a) **Covenant Not to Discriminate.** In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) **Subleases and Other Subcontracts.** Subtenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) **Non-Discrimination in Benefits.** Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as

well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) HRC Form. Subtenant shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the “HRC”).

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

**21.4. No Relocation Assistance; Waiver of Claims.** Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated or expires by its own terms, and Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 *et seq.*), except as otherwise specifically provided in this Sublease with respect to a Taking.

**21.5. MacBride Principles - Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**21.6. Tropical Hardwood Ban.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or

tropical hardwood product.

**21.7. Conflicts of Interest.** Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.

**21.8. Burma (Myanmar) Business Prohibition.** Subtenant is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(G) of the San Francisco Administrative Code. Sublandlord reserves the right to terminate this Sublease for default if Subtenant violates the terms of this clause. Chapter 12J of the San Francisco Administrative Code is hereby incorporated by reference as though fully set forth herein. The failure of Subtenant to comply with any of its requirements shall be deemed a material breach of this Sublease. In the event Subtenant fails to comply in good faith with any of the provisions of Chapter 12J of the San Francisco Administrative Code, Subtenant shall be liable for liquidated damages for each violation in an amount equal to Subtenant's net profit under this Sublease, or 10% of the total amount of the Sublease, or \$1,000, whichever is greatest. Subtenant acknowledges and agrees the liquidated damages assessed shall be payable to the Sublandlord upon demand and may be setoff against any moneys due to the Subtenant from this Sublease.

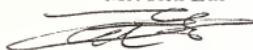
**21.9. Prevailing Wages for Construction Work.** Subtenant agrees that any person performing labor in the construction of the alterations required under Section 7.1 [Alterations] shall be paid not less than the highest prevailing rate of wages and that Subtenant shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Subtenant further agrees that, as to the construction of such improvements under this Sublease, Subtenant shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code that relate to payment of prevailing wages. Subtenant shall require any contractor to provide, and shall deliver to Sublandlord every two weeks during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any of the required alterations.

**21.10. Prohibition of Tobacco Advertising.** Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the Authority or the City, including the Premises and the Property. This prohibition includes the placement of the name of a company producing selling or distributing

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

**SUBTENANT:**

Mr. Rex Lui



**SUBLANDLORD:**

Treasure Island Development Authority

By:

Its:



ANNEMARIE CONROY  
Executive Director  
Treasure Island Development  
Authority Project

Approved as to Form:



Deputy City Attorney











**AGENDA ITEM**  
**Treasure Island Development Authority**  
**City and County of San Francisco**

**Subject:** FY 2002 Budget

**Agenda Item No. 11**  
**Meeting of April 11, 2001**

**Contact/Phone:** Annemarie Conroy, Executive Director  
Eila Arbuckle, Finance Manager  
274-0660

**SUMMARY OF REQUESTED ACTION**

Staff request authorization to forward the TI Project's proposed FY 2002 budget to the Mayor's Office.

**DISCUSSION**

The long term goal of the Treasure Island Project is to develop Treasure and Yerba Buena Islands in accordance with the Citizens' Draft Reuse Plan to maximize revenues to the TI Project and, thus, eliminate the need for General Fund support; create new job opportunities for San Francisco residents, including assuring job opportunities for homeless and disadvantaged City residents; increasing recreational and Bay access venues for San Francisco and Bay Area residents and visitors; and promoting the welfare and well being of the citizens of San Francisco. In FY 2001, the TI Project:

- Provided facilities for movie production and special events that directly generate Transient Occupancy Taxes and Sales Tax revenues to the General Fund. Over the past three years, movies and special events (such as 1999's launch of a new Lincoln model) have generated more than \$50 million in hotel room rentals and other expenses that generate transient occupancy and sales tax revenues for the General Fund)
- Brought 750 housing units online: 628 market rate units through the lease with the John Stewart Company and 122 subsidized units through leases with members of the Treasure Island Homeless Development Initiative (TIHDI)
- Completed the application to the Navy to convey former naval station Treasure Island to San Francisco at no cost to the City
- Transferred operations of the TI Marina to Treasure Island Enterprises (TIE) and initiated negotiations with TIE for long term development of the TI Marina
- Provided training facilities for General Fund agencies such as the police, fire, and sheriff
- Provided job opportunities for economically disadvantaged San Franciscans through contracts with TIHDI member organizations
- Provided facilities for a public elementary school
- Expanded public access from the western shore of Treasure Island to most (75%) of TI and provided more than 500,000 people the opportunity to enjoy TI



In FY 2002, staff projects earning revenues of **\$6.27 million** from facility rentals (**\$4.83 million** from the housing lease, and **\$1.44 million** from non-housing rentals and special events). As anticipated, the staff projects no new Cooperative Agreement revenues from the Navy.

Projected expenses include:

- **Personnel:** **\$1.3 million** in personnel costs (12 FTE's, no new positions)
- **Operations:** **\$2.1 million** in services from non-City departments, with **\$1.6 million** in contractual services, including contracts with TIHDI member organizations for grounds maintenance, landscaping, and janitorial, and to support the TIHDI operations.
- **Services from City Departments:** **\$5.4 million** in the services of other City departments, offset by **\$3.1 million** in rent revenues from City agencies (pursuant to City accounting standards, these revenues are classified as interdepartmental recovery). This budget projects that TI will be conveyed to the City by the end of calendar year 2001, at which time the implementation of the no cost economic development conveyance will prohibit the Authority from using revenues generated on TI to provide municipal services such as fire and police services.
- **Projected unallocated revenues:** **\$1.4 million** of FY 2002's anticipated revenues are unallocated in this budget proposal. If realized, these funds could be used to fund the provision of municipal services should conveyance fall behind schedule. If this potential need does not materialize, the revenues could be used (subject to Authority and Board of Supervisors approval) to fund potential activities such as accelerated environmental remediation, ADA and other code compliance, and infrastructure improvements.

Attached to this memorandum is a spreadsheet summarizing projected revenues and expenses.



**APPROVING THE BUDGET OF THE TREASURE ISLAND DEVELOPMENT AUTHORITY FOR FISCAL YEAR 2001-2002, AND AUTHORIZING THE EXECUTIVE DIRECTOR TO SUBMIT THE PROPOSED BUDGET TO THE MAYOR OF THE CITY AND COUNTY OF SAN FRANCISCO FOR FURTHER REVIEW AND INCLUSION IN THE CITY'S FY 2001-2002 BUDGET.**

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, In 1995, the General Services Administration and the Bureau of Land Management determined that Yerba Buena Island was surplus to the Federal Government's needs and could be transferred to the administrative jurisdiction of the Department of Defense under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure Island; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property; and

WHEREAS, As provided under the Authority's Bylaws, the Executive Director and the Finance Director have prepared a budget for the Authority for Fiscal Year 2001-2002, a copy of which is attached to this resolution as Exhibit A (the "FY 2001-2002 Budget Submittal"); Now, therefore be it

**RESOLVED, THAT THE BOARD OF DIRECTORS OF THE TREASURE ISLAND DEVELOPMENT AUTHORITY HEREBY ADOPTS AND APPROVES THE FY 2001-2002 BUDGET AND HEREBY DIRECTS THE EXECUTIVE DIRECTOR AND THE FINANCE DIRECTOR TO SUBMIT THE FY 2001-2002 BUDGET TO THE MAYOR OF THE CITY AND COUNTY OF SAN FRANCISCO FOR FURTHER REVIEW AND INCLUSION IN THE CITY AND COUNTY OF SAN FRANCISCO'S FY 2001-2002 BUDGET.**



### CERTIFICATE OF SECRETARY

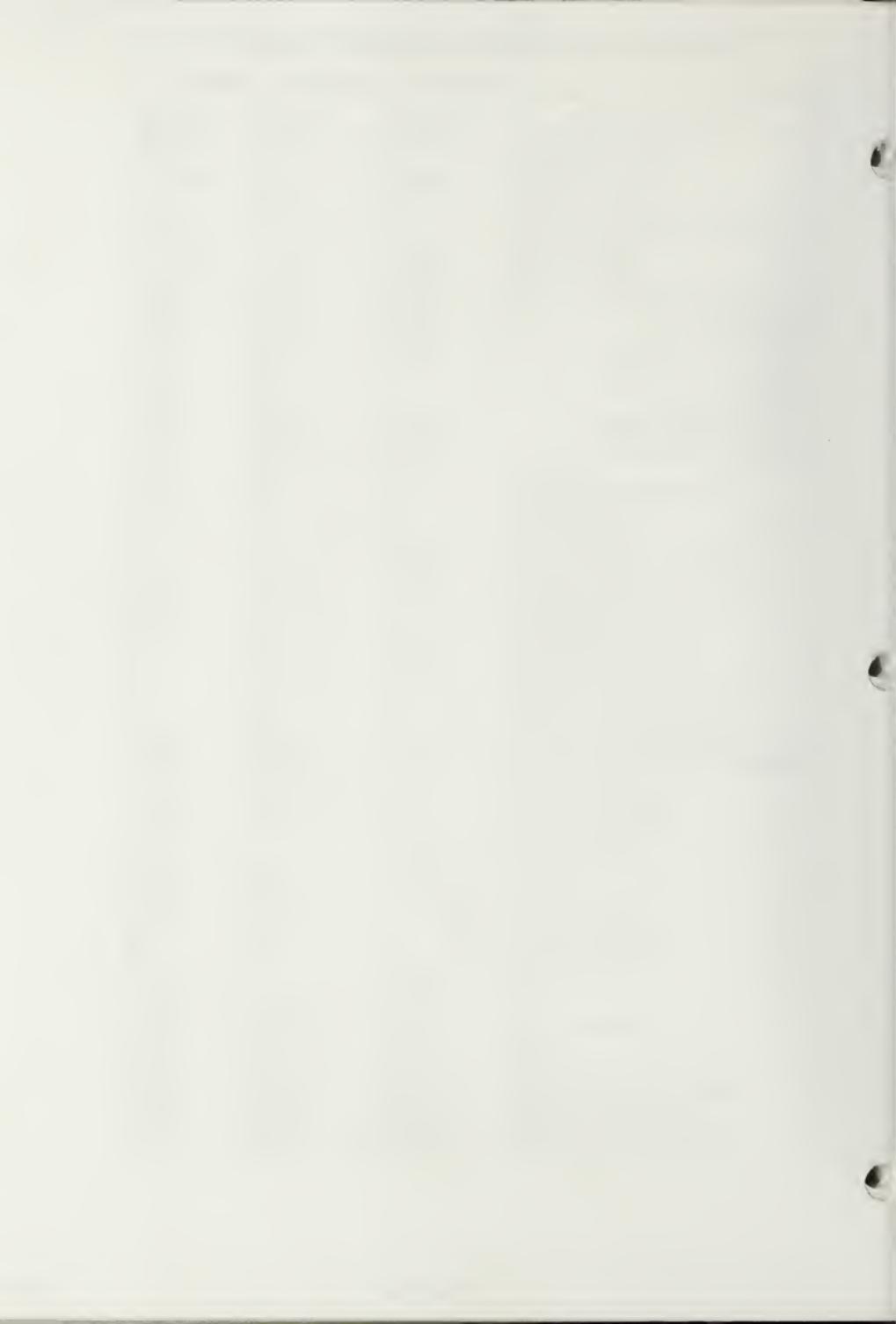
I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on April 11, 2001.

---

John Elberling, Secretary



MAYOR'S TREASURE ISLAND PROJECT FY 2001-2002 BUDGET SUBMITTAL			
DESCRIPTION	FY 01 BUDGET	FY02 SUBMITTAL	difference
<b>TOTAL REVENUE BUDGET (all non-CA)</b>	<b>4,821,212.00</b>	<b>6,265,000.00</b>	<b>1,443,788.00</b>
210016 TI Special Events	326,212	375,000	48,788.00
210017 YBI Special Events	0	0	0.00
210018 TI Commercial	1,100,000	865,000	-235,000.00
210019 TI Film Permits	60,000	60,000	0.00
210020 YBI Film Permits & Cellsite leases	0	125,000	125,000.00
210021 Port Operations	10,000	10,000	0.00
210022 TI Housing	3,225,000	4,650,000	1,425,000.00
210023 YBI Housing	100,000	180,000	80,000.00
<b>TOTAL EXPENSE BUDGET</b>	<b>4,821,212</b>	<b>5,633,359</b>	<b>798,400</b>
<b>PERSONNEL TOTAL</b>	<b>987,663</b>	<b>1,281,710</b>	<b>280,300</b>
Salaries	801,128	950,968	149,840
Fringe Benefits @ 25% of Salaries	186,535	237,742	37,460
Salary Savings	0	18,000	18,000
Temporary Employees	0	75,000	75,000
<b>TOTAL OPERATIONAL EXPENSES</b>	<b>3,833,549</b>	<b>4,351,649</b>	<b>518,100</b>
<b>OPERATIONAL /NON CITY DEPTS</b>	<b>1,911,356</b>	<b>2,110,820</b>	<b>199,464</b>
021 TRAVEL	5,000	6,000	1,000
022 TRAINING & CONFERENCES	5,000	6,000	1,000
023 FIELD EXPENSES	0	500	500
024 MEMBERSHIPS	500	1,500	1,000
025 SPECIAL EVENTS/PROMOTION	85,820	85,820	0
027 PROF/SPECIALIZED SERVICES	1,569,036	1,700,000	130,964
028 BLDG. MAINTENANCE SERVICES	96,000	145,000	49,000
029 EQUIPMENT MAINTENANCE	0	5,000	5,000
03100 EQUIPMENT RENTALS	29,165	30,000	835
03500 CURRENT EXPENSES	94,835	95,000	165
040 OFFICE MATERIALS & SUPPLIES	25,000	25,000	0
05111 INSURANCE EXPENSES	0	0	0
05200 PYMTS TO OTHER GOVT AG.	1,000	1,000	0
06000 EQUIPMENT PURCHASES	0	10,000	10,000
<b>OPERATIONAL SERVICES BY CITY DEPTS</b>	<b>1,922,193</b>	<b>2,240,829</b>	<b>318,636</b>
0813B Engineering	0	25,000	25,000
081CB Risk Management	20,000	30,000	10,000
081XX Parking & Trafic	0	250,000	250,000
081ct City Attorney	367,200	367,200	0
081CZ DTIS special	1,887	0	-1,887
081C5 DTIS	25,015	95,000	69,985
081FD Fire	3,397,191	2,500,000	-897,191
081PA Central Shops	0	25,000	25,000
081PF Central Shops (fuel)	0	4,500	4,500
081PR reproduction	5,000	5,000	0
081PS POLICE	308,271	0	-308,271
DPW	1,358,500	2,100,000	700,000
081WB BLDG REPAIR	1,000,000	1,400,000	400,000
081WE	258,500	350,000	91,500
081WM	100,000	350,000	250,000
08699 Interdepartmental Recovery	-3,560,871	-3,160,871	400,000
Fire: AEG 1G-AGF-AAA 315018	-2,100,000	-1,800,000	300,000
Police: ACM 1G-AGF-AAA 385030	-1,200,000	-1,100,000	100,000
Sheriff: ASB 1G-AGF-AAA 065014	-260,871	-260,871	0







**AGENDA ITEM**  
**Treasure Island Development Authority**  
*City and County of San Francisco*

**Subject:** Endorsing the acceptance of \$879,000 from the Federal Highway Administration Ferry Boat Discretionary Fund for the Planning and Construction of a Temporary Ferry Terminal and authorizing the Executive Director to accept and enter into a Grant Agreement for the funding.

## **Agenda No. 12**

**Contact Person/Phone:** Joan Rummelsburg (415) 274-0660  
Marianne Conarroe

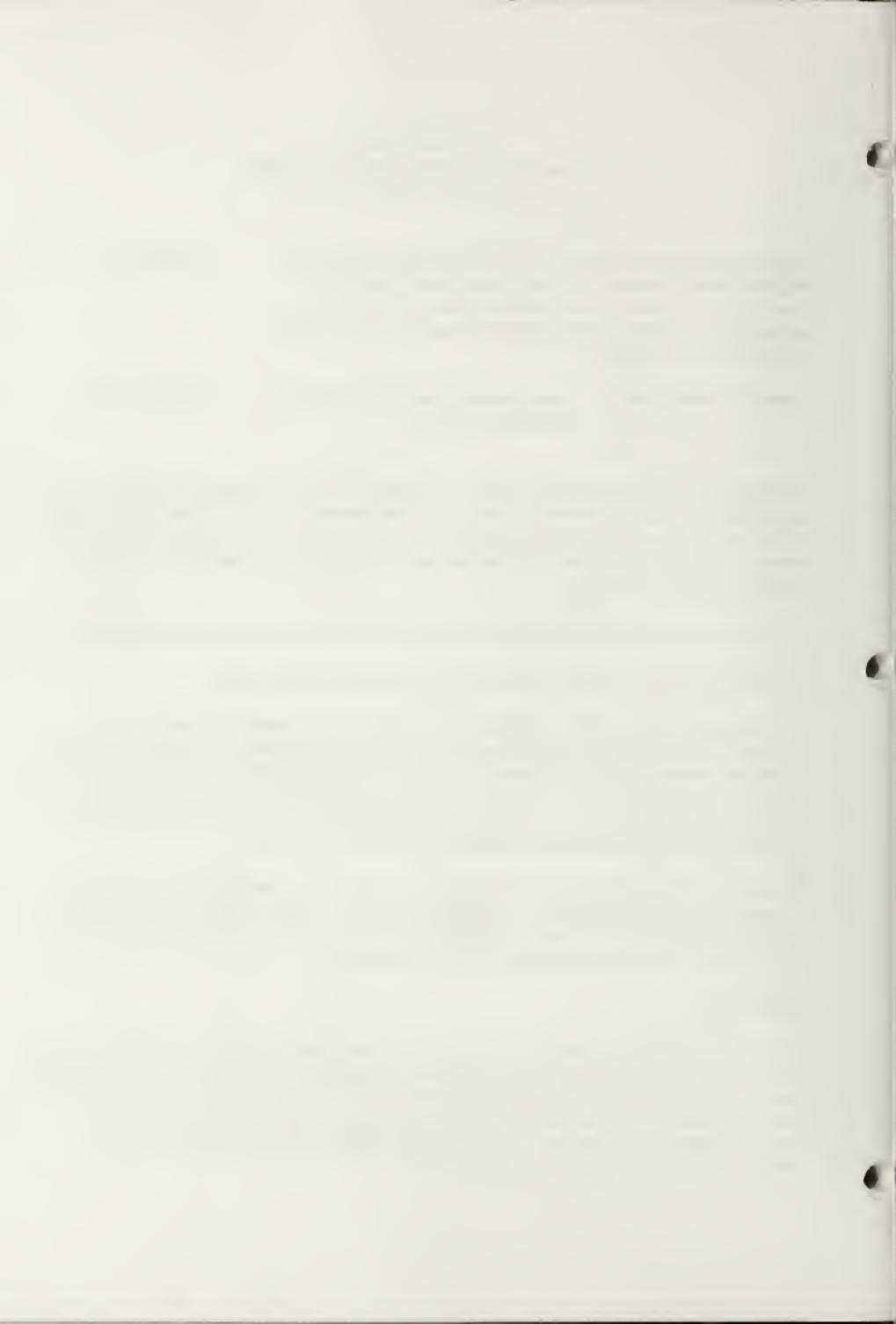
April 11, 2001

**SUMMARY OF PROPOSED ACTION:** The Federal Highway Administration (FHWA), as part of the Ferry Boat Discretionary Fund (FBDF) has earmarked \$879,000 for planning studies and the construction of a temporary ferry terminal on Treasure Island. A match of \$121,000 is required by the Federal Highway Administration. The resolution proposes that the Treasure Island Development Authority:

- Authorize the Executive Director to accept the funds and to enter into a grant agreement.
- Obligate \$121,000 in matching funds from the Authority's 2002 budget..
- Urge Muni to assist the Project Office in securing the funds from the Federal Transit Administration (FTA). Muni has agreed to assist the Authority in obligating the funds and with accounting and reporting tasks. In order to secure that the funds are obligated by the end of this federal fiscal year, September 30, 2001, Caltrans, FHWA'a agent for the FBDF, recommended that the San Francisco Municipal Railway (MUNI) act as the agent for TIDA in obligating the funds through the Federal Transit Administration.
- Authorize the payment of 5% of the total grant to Muni for its responsibilities. A separate agreement will be concluded between TIDA and Muni. MUNI has agreed to assist TIDA in obligating the funds in a timely manner, fulfilling all accounting and reporting requirements and charges an administrative fee of 5% for such services.

#### **Background:**

*Construction of temporary ferry terminal:* The Treasure Island Development Authority currently owns five barges. One barge has been fabricated with platforms, gangways and switchbacks. We have used those facilities to accommodate ferries docking for special events such as the 1998 Labor Day Blues and Arts Festival, the Alzheimers Memory Walk (1998, 1999) as well as private fundraisers and large parties. Participants and guests attending special events on Treasure Island regularly use our facilities.



However, in order to provide regular passenger service, an ADA accessible gangway from the barge to the existing pier as well as other essential items to provide a safe passage for passengers to board and disembark. Is necessary. These include safety lighting and fencing, a sound system, shelters for wind and inclement weather. The improvements will enable us to start regular ferry/water taxi service to our residents, workers and visitors.

*Planning and engineering studies:* To establish specifications for a temporary terminal, planning and environmental studies and clearance must be obtained. A small portion of the funds will be used for design.

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[Endorsing Ferry Boat Discretionary Fund Grant Application]

1 ENDORSING THE ACCEPTANCE OF AN \$879,000 GRANT FROM THE FEDERAL HIGHWAY  
2 ADMINISTRATION'S FERRY BOAT DISCRETIONARY FUND FOR PLANNING STUDIES,  
3 AND A TEMPORARY FERRY TERMINAL, OBLIGATING \$121,000 FOR THE LOCAL MATCH  
4 FROM TIDA'S 2002 BUDGET, URGING MUNI TO COOPERATE IN SECURING THE GRANT  
AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ACCEPT AND ENTER INTO A GRANT  
AGREEMENT FOR SUCH FUNDING

5 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section  
6 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes  
7 of 1968 (the "Act"), the California Legislature (i) designated the Authority as a redevelopment agency  
8 under California redevelopment law with authority over former Naval Station Treasure Island (the  
9 "Base"), and (ii), with respect to those portions of the Base which are subject to the public trust for  
10 commerce, navigation and fisheries (the "Tidelands Trust"), vested in the Authority the authority to  
11 administer the Tidelands Trust as to such property; and,

12 WHEREAS, The Board of Supervisors approved the designation of the Authority as a  
13 redevelopment agency with powers over Treasure Island in Resolution No. 43-98, dated February 6,  
14 1998; and

15 WHEREAS, In July 1996, after an extensive community planning effort , a Draft Reuse Plan for  
16 the Base was unanimously endorsed by the Mayor, the Board of Supervisors, the Planning Commission  
17 and the CRC; and

18 WHEREAS, the Reuse Plan specifies the critical role of ferries in accessing Treasure Island;  
19 and

20 WHEREAS, the Treasure Island Development Authority seeks the creation and implementation  
21 of a transportation network in which residents, visitors and those working on Treasure Island can  
22 reduce their dependence on private automobiles; and

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1           WHEREAS, regularly scheduled ferry service will alleviate traffic congestion and reduce air  
2 pollution on Bay Area roads and highways, especially the Bay Bridge and is essential to the well-being  
of Treasure Island residents and businesses; and

4           WHEREAS, the Federal Highway Administration (FHWA) as part of the Ferry Boat  
5 Discretionary Fund (FBDF) earmarked \$879,000 for planning studies and the construction of a  
6 temporary ferry terminal; and

7           WHEREAS, the FHWA funds for \$879,000 would enable the Authority to develop an ADA  
8 accessible gangway and other items essential to provide a safe passage for passengers to board and  
9 disembark from Pier 1 on Treasure Island, and such access is critical to the provision of regular ferry  
10 service; and

11           WHEREAS, because the FHWA requires a local match of \$121,000, the Board of Directors  
12 agree and authorize the obligation of \$121,000 as local match for the FBD funds from TIDA's  
13 2001/2002 budget to secure the ferry facilities; and

14           WHEREAS, in order to ensure that the funds are obligated by the end of this federal fiscal year,  
15 September 30, 2001, Caltrans, FHWA's agent for the FBDF, recommended that the San Francisco  
16 Municipal Railway act as agent for TIDA in obligating the funds through the Federal Transit  
17 Administration; and

18           WHEREAS, The Authority urges Muni to assist TIDA in obligating the funds in a timely  
19 manner, fulfilling all accounting and reporting requirements and has stated that its charges for such  
20 services will be 5% of the grant;

21           WHEREAS, these services are essential to obtaining, retaining and administering the funding of  
22 the FBDF; Now therefore be it

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RESOLVED, the Treasure Island Development Authority supports and endorses the acceptance and use of such grant funds by the Executive Director on behalf of the Authority; and be it

FURTHER RESOLVED, the Treasure Island Development Authority agrees to obligate \$121,000 as a match for the \$879,000 Ferry Board Discretionary Fund earmark; and be it

FURTHER RESOLVED, the Board of Directors authorizes Muni to act as agent for TIDA in securing the funds from the Federal Transit Administration, accounting for grant expenses and fulfilling report requirements and agrees to pay Muni 5% of expenses subject to a separate agreement between Muni and TIDA; and

FURTHER RESOLVED, the Board of Directors authorizes the Executive Director of the Authority or her designee to enter into a grant agreement and any additions, amendments or other modifications to such grant agreement (including, without limitation, the attached exhibits) that the Executive Director or her designee determines, in consultation with the City Attorney, are in the best interests of the Authority and do not otherwise materially increase the obligations or liabilities of the Authority, and are necessary or advisable to obtain the FHWA grant funds and effectuate the purpose and intent of this resolution;

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on April 11, 2001.

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**John Elberling, Secretary**





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Minutes of Meeting  
Treasure Island Development Authority  
April 11, 2001

DOCUMENTS DEPT.

Call to Order: 2:00 PM

Roll Call Present: Gerald Green  
Susan Po-Rufino  
James Morales  
William Fazande

SEP 18 2001  
SAN FRANCISCO  
PUBLIC LIBRARY

Excused: John Elberling  
Doug Wong

2. Approval of Minutes: The minutes of March 29, 2001 were approved unanimously.
3. Communications: London Breed, Commission Secretary, reported that there were no communications.
4. Director's Report: A full report will be given at the May 9, 2001 meeting.
5. General Public Comment: None
6. Ongoing Business: None
7. Resolution approving a sublease, as amended, with the Sheriff's Department for the Brig facility.

Stephen Proud, Director of Development, reports that on October 11, 2001, the Authority approved a sublease with the Sheriff's Department for the Brig Facility to be used as a training facility and perhaps for overflow jail facilities if the Authority is notified in advance. On January 29, 2001, the sublease was introduced to the Board of Supervisors and then referred to the Finance Committee for consideration. The Finance Committee approved the sublease and the full Board of Supervisors approved the sublease on Monday, April 9, 2001. Four amendments to the sublease suggested by the Board of Supervisors are before you today for approval. They are; correct the resolution to reflect a change in the term of the sublease from 5 years to 2 years; change the definition for violent offenders to the statutory definition as set forth in the penal code; change the termination notification from 1 year to 30 days; and prorate the utility and landscaping costs for the days the SFSD doesn't have access to the facility

Mr. Fazande moved approval. Po-Rufino seconded. Approved 4-0

8. Resolution authorizing the Executive Director to execute a contract with Rubicon Enterprises, Inc., a member organization of the Treasure Island Homeless Development Initiative, to provide landscaping and ground maintenance service for an amount not to exceed \$600,000.

Eila Arbuckle, Finance Manager, questions the amount but reports that Rubicon has been providing the services even when the Navy was in charge. Staff has negotiated a new contract with Rubicon to meet some of the City's goals for a reduction of water consumption for irrigation and to minimize the expense. The estimated cost of this contract is \$50,000 per month and an extra \$180,000 is in the budget for adjunct landscaping and ground maintenance services to be used as needed. Ms. Arbuckle states that the correct amount of the contract is \$780,000 and the resolution should be corrected to reflect this.

Michael Cohen, City Attorney, states that the resolution says \$780,000 but the calendar is off. Since the purpose of the Sunshine Ordinance is to give people adequate notice for comments, the difference is small enough that adequate notice has been provided for anyone interested in commenting on this item.



Steve Jeffery, of Rubicon, reports they have been doing the landscaping of Treasure Island for the past three years. Rubicon has hired 39 people from several TIHDI member organizations such as Swords to Plowshares, Toolworks, Goodwill, Skillsense, Walden House, etc.

Bruce Franks, TIHDI Job Broker, reports that Rubicon is doing a good job and all of their hires come through the TIHDI Job Brokers.

Mr. Green asked does Rubicon service the entire base. Ms. Arbuckle states this service is only for areas not leased to John Stewart Company or under Coast Guard control. It is for areas leased from the Navy and those covered under the Cooperative Agreement.

Ms. Arbuckle states that the smaller lessees pay us and we pay Rubicon but the larger tenants pay directly. It is in their subleases. Both islands are mapped out in landscaping parcels, which are numbered reflecting different levels of service and whether or not they pay directly.

Mr. Morales moved approval. Mr. Fazande seconded. Approved 4-0

9. Resolution authorizing the Executive Director to extend the sublease with Mr. Rex Liu for the Photo Booth on a month-to-month basis not to exceed one year.

London Breed, Development Specialist reports that the resolution authorizes the Executive Director to extend the sublease with Mr. Liu for the Photo Booth at the entrance to the Island for an additional one-year term under the same conditions as the original sublease dated October 15, 1999. The Photo Booth is used to sell film, cameras and souvenirs and for no other purpose. Staff recommends approval. Extensions beyond April 15, 2001 would require additional Authority approval.

Mr. Fazande moved approval. Mr. Morales seconded. Approved 4-0

10. A report on the Amendment to the John Stewart sublease to include licensed health care professionals in the San Francisco Essential Preference Group. This is a discussion item only.

Mr. Proud reports that at the last meeting, the Authority passed a resolution authorizing staff to move forward with an amendment to the John Stewart Company sublease to add to the category of essential licensed health care professionals. The Authority requested staff to come back and address three separate issues.

A census count on how many people are utilizing the different preference categories on Treasure Island. As of last week, the John Stewart Company reports that the TI essential and the SF essential categories represent 24 of the total number of units of 609. This category has a right of first refusal for up to 35% of the units. They are dramatically under that 35% allocation. The university consortium is taking up 94 units, the San Francisco workers and residents have 409, the Bay Area workers or residents have 39 units and the general public picked up the 43 units. This shows there aren't a lot of people utilizing that preference group. By amending it to include licensed health care professionals we would not be expanding it significantly.

Mr. Green asked about the process for renting and for the waiting list for the essential category. Mr. Proud replied that if someone fell into that preference category they would move to the top of the list and as units became available they took the list in the order they came. The City Attorney's interpretation was that the units that were available would be allocated based on the way the preferences categories were, so if 10 units became available, 35% of the units went to the SF essentials category, 25% to the university consortium and 40% to the rest of the remaining groups. In practice the John Stewart Company takes those people that fall into the preference moves them to the top of the list and the units are taken as available. We seek your direction to either continue that process or to divide the units that become available each month among the different categories.

Mr. Green asked about the definition of licensed health care professional. Mr. Proud replied that it would include lab/medical technologists, nurse case managers/RN's, nurse assistants, LVN's, staff nurses or technicians, pharmacists, pharmacist technicians, physical therapists, radiology technologists/therapists, ultrasound technicians and respiratory care practitioners. The Hospital Council will work with the John Stewart Company to screen applicants and verify eligibility.

Mr. Cohen states that the process needs to work on a balanced basis, so that if 10 units became available, instead of all 10 going to the preference category until it's filled, 3 or 4 would go to that category and the rest would go to either the general public or the university consortium.

Ms. Conroy expresses concern of the fairness of people being able to cut in front of people who have already been waiting on the list.

Discussion follows regarding a balanced approach. The action will be carried out on a balanced approach.

11. A resolution approving the budget of the Treasure Island Development Authority for FY 2001-2002, and authorizing the Executive Director to submit the proposed budget to the Mayor of the City and County of San



Francisco for further review and inclusion in the City's FY2001-2002 budget.

Ms. Arbuckle states that the Authority's FY 02 budget is similar to the previous two budgets. We anticipate significant increases in revenues from housing. The special percentage rent component of the housing lease ended in November of 2000, so we're already receiving more housing revenue than we had in the past. Ms. Arbuckle reports on another factor affecting the budget and that is the anticipation that the end of FY 01 will convey TI to the Authority through an economic development conveyance. Under the terms, as we understand them, of an EDC conveyance, we will not be allowed to use the revenue earned from the assets the Navy turns over to us to fund city services. We can fund infrastructure and capital projects. The Authority is obligated to pay for services such as Fire Suppression, Police and certain DPW expenses. Our budget projects paying these expenses for the first half of the year. These are unallocated anticipated revenues of 1.4 million. No recommended allocation has been made because it is not clear when the conveyance will happen and how much we will have to pay for city services. When we know for certain, we will bring forth to you another budget to make staff recommendation. Funds would be used for ADA compliance and other infrastructure improvements. Our personnel budget anticipates 12 FTE's, no change from the current year. Our operations are 2.1 million in services from non-City departments with about 1.6 million going to outside contractors such as Rubicon, an allocation for monitoring environmental remediation services, contracts to finish redevelopment plan, and the EIR and TIHDI support. We will continue to pay DPW for building maintenance. Ms. Arbuckle reports the main amount of our funding comes from the John Stewart leases. We anticipate 4.8 million from the housing lease and 1.4 million from other facility rentals and special events.

Mr. Morales asked what accounts for the negative \$235,000 under commercial revenues for FY 02.

Ms. Arbuckle states that just represents the change between FY 01 and FY 02. We had anticipated renting Bldg. 3 in FY 01, which we did not, so we cut our revenue estimate for next year based on what happened this year.

Mr. Green asked if the process to use the 1.4 million would be as a supplemental budget.

Ms. Arbuckle states yeas and then we would have to come back to you to ask permission to allocate it and then to the Board of Supervisors for their permission for spending authority.

Ms. Po-Rufino moved approval. Mr. Morales seconded. Approved 4-0

12. Resolution authorizing the Executive Director to accept and enter into a grant agreement for \$879,000 from the Federal Highway Administration Ferry Boat Discretionary fund for the planning and construction of a temporary ferry terminal on Treasure Island.

Joan Rummelsburg, Director of Special Projects, states that late last year we were notified by CalTrans that \$879,000 was earmarked for construction of a temporary ferry terminal on TI. The focus of this resolution is about obligating the funds, approving the project and accepting the funds. The problem is obligating the money. The project consists of construction of an accessible ADA gangway and other items that provide safe passage for passengers, including wind shelter, sound system and safety lighting. The Authority is required to provide \$121,000 in matching funds, which we decided to do so from the budget you just approved. In order to obligate the funds in a timely way, we have to show sufficient progress. CalTrans recommended we go through Muni as a funding agent to do this for us. Muni will probably require 5% of the grant fund to do record keeping and to be a liaison for us to the FTA.

Mr. Green asked what is the time frame for construction completion. Ms. Rummelsburg states that there are a number of things that have to be done, i.e., planning the terminal. Muni has to get it in the Federal Transportation Improvement Plan before they can start their process and that has already begun. With the delay and we would probably start next spring.

Mr. Green asked at this point, there's not an obligation to commence or finish construction.

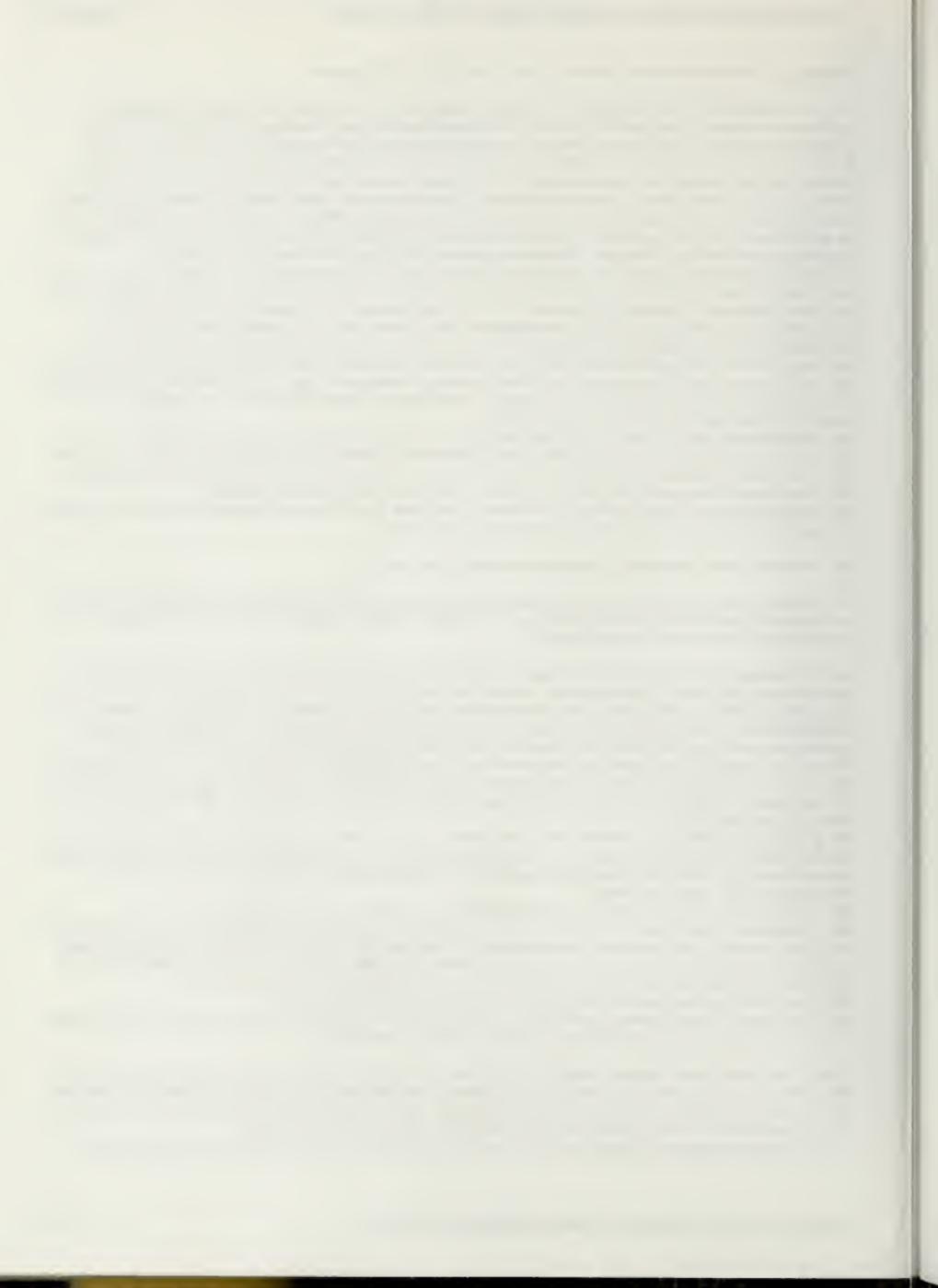
Ms. Rummelsburg states that one of the reasons we are going through Muni and the FTA is that it stops the clock to get the essential studies done and the environmental clearance and engineering drawings. By going through Muni and the FTA there is no federal requirement to start or complete the project by a certain date or lose the funds. Had we applied directly we would need to spend and obligate the money by September.

Mr. Green asked are the planning and engineering studies on the time clock too.

Ms. Rummelsburg states that Muni and the FTA will establish a time clock for us. We will work with Muni and the FTA to stop the clock before September 30, the end of this federal fiscal year.

Terry Shore, Blue Water Network, a national environmental organization based in San Francisco, recommends the solar sailor, which runs on sun and wind, as opposed to the polluting diesel ferries. She reports that the fast, high-speed diesel ferries produce 4 to 9 times the pollution per passenger mile as a diesel bus or car. She would like an opportunity to present a full presentation in the future to discuss these issues.

Ruth Gravanis states she is happy to see the move towards alternative transportation instead of private auto.



Mr. Green moved approval. Ms. Po-Rufino seconded. Approved 4-0

Meeting adjourn 2:52 PM in honor of Deputy Director/Facilities Manager Robert Mahoney of the Treasure Island Development Authority who passed away on April 4, 2001

[Return to Meetings Page](#)



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OFFICE OF THE MAYOR  
SAN FRANCISCO



WILLIE LEWIS BROWN, JR.

REASURE ISLAND PROJECT  
410 AVENUE OF THE PALMS  
BUILDING 1, 2ND FLOOR  
TREASURE ISLAND  
SAN FRANCISCO, CA 94130  
(415) 274-0660  
FAX (415) 274-0299

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**TREASURE ISLAND DEVELOPMENT AUTHORITY  
MEETING AGENDA  
Wednesday, May 9, 2001 1 P.M.**

Room 400, City Hall  
1 Dr. Carlton Goodlett Place

Willie L. Brown, Jr., Mayor

DIRECTORS

John Elberling, Vice-Chairman  
William Fazande  
James Morale

DOCUMENTS DEPT.

MAY - 4 2001

SAN FRANCISCO  
PUBLIC LIBRARY

Gerald Green  
Susan Po-Rufino  
Doug Wong

Annemarie Conroy, Executive Director  
London Breed, Commission Secretary

**ORDER OF BUSINESS**

1. Call to Order and Roll Call
2. Approval of Minutes (*Action Item*)
3. Communications (*Discussion Item*)
4. Report of the Treasure Island Project Director Annemarie Conroy (*Discussion Item*)
  - Report on access to Treasure Island including public use last month
  - Status of environmental clean up
  - Report on short-term leases
  - Report on San Francisco-Oakland Bay Bridge/Caltrans issues
  - Report on Treasure Island community issues
  - Report on Citizens Advisory Board
  - Report on TIHDI
  - Financial Report
  - Legislation/hearings affecting Treasure Island
5. General Public Comment (*Discussion Item*)
6. Ongoing Business by Directors and Introduction of New Business by members (*Discussion Item*)
7. Resolution approving a sublease retroactive to July 1, 2000 with the San Francisco Police Department for use of Building 402, 461, 462, 463, and 497 for training activities and the proposed location for a regional training facility for the Police Academy (*Action Item*)
8. Resolution approving an interim sublease with the Treasure Island Yacht Club for Building 298 (*Action Item*)
9. Resolution approving the extension of a Use Permit with California Engineering Contractors, Inc./Modern Continental for use of Pier 1 for an additional six months (*Action Item*)
10. Adjourn

*Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Project Office and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.*

#### **MEETING AGENDAS NOW AVAILABLE ON E-MAIL**

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#### **TREASURE ISLAND WEBSITE**

Check out the Treasure Island website at [www.ci.sf.ca.us/treasureisland](http://www.ci.sf.ca.us/treasureisland) to find out about activities and facilities on Treasure Island, special events venues for rent, or to review the Treasure Island Development Authority's agendas and minutes.

**TREASURE ISLAND DEVELOPMENT AUTHORITY**  
**City and County of San Francisco**

Agenda Item No. 7

May 9, 2000

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**Subject:** Resolution approving a sublease retroactive to July 1, 2000 with the San Francisco Police Department for use of Building 402, 461, 462, 463, and 497 for training activities and for the proposed location of a regional training facility for the Police Academy

**Staff Contact:** London Breed, Development Specialist 274-0665

**SUMMARY OF PROPOSED ACTION**

The staff is requesting the Authority to adopt a resolution to enter into a sublease with the City and County of San Francisco acting by and through the Director of Property on behalf of the San Francisco Police Department for use of Building 402 (Gymnasium), Building 461, 462 and 463 (the Austin Hall Complex), and Building 497 (Ship Shape) to be used as a location for training activities and for the proposed location of a regional Police Academy.

**DISCUSSION**

The San Francisco Police Department would like to establish their new Regional Training Center at Treasure Island. The proposed facility will include the training of basic recruit officers, continuing professional education for law enforcement personnel and perishable skills programs.

On July 21, 2000, the Authority received a final draft of the appraisal report from Clifford and Associates that assessed the lease value at \$1.2 million per year, not including Building 463. The Police Department requested Building 463 after the appraisal had been completed. Staff agreed to include the small Building at no additional cost because the poor condition of Building 463 and the location is within the premises of the Austin Hall Complex.

The Police Department has occupied the facility since July 2000 after funds had been budgeted by the City and County of San Francisco for the fiscal year 2000-01 to rent the facilities from the Authority.

The annual rental rate for the facility will be \$1.2 million and does not include common area maintenance charges in the amount of \$3,170 per month and landscaping charges in



the amount of \$2,600 per month. The term for the sublease will be two years with the option of either party to terminate with a 30-days notice. Both the Ship Shape and the Gymnasium are include in the RFQ for the Master Developer for Treasure Island, therefore the shorter term allows the Authority the ability to maintain maximum flexibility.

The SFPD has submitted, at the request of the Authority, a management plan, emergency/contingency plan and improvements to the facilities.

The sublease requires public access to the Gymnasium and the theatre in Austin Hall once the improvements have been completed. The proposed times have not been finalized, however, the Authority has suggested the Gymnasium be available to the public Monday through Friday from 4PM to 10 PM, Saturday through Sunday from 8AM to 5PM, and the theatre in Austin Hall be available on an "as needed" basis during the evenings and on weekends.

## **RECOMMENDATION**

Staff recommends approval for the Authority to enter into a sublease retroactive to July 1, 2000 with the City and County of San Francisco acting by and through the Director of Property on behalf of the San Francisco Police Academy pending approval from the Board of Supervisors.

## **EXHIBITS**

Draft Sublease



1 [Police Academy Sublease]  
2 AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A SUBLEASE WITH THE  
3 CITY AND COUNTY OF SAN FRANCISCO FOR THE AUSTIN HALL COMPLEX  
4 (BUILDINGS 461, 462, AND 463), THE GYMNASIUM (BUILDING 402), THE SHIP SHAPE  
5 BUILDING (BUILDING 497), AND RELATED OUTDOOR AND PARKING AREAS ON  
6 TREASURE ISLAND FOR TRAINING ACTIVITIES AND FOR THE PROPOSED LOCATION  
7 OF A REGIONAL POLICE ADACEMY, FOR AN ANNUAL RENT OF \$1,200,000 PER YEAR  
8 RETROACTIVE TO JULY 1, 2001.

9 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
10 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
11 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority  
12 as a redevelopment agency under California redevelopment law with authority over former  
13 Naval Station Treasure Island (the "Base"), and (ii), with respect to those portions of the Base  
14 which are subject to the public trust for commerce, navigation and fisheries (the "Tidelands  
15 Trust"), vested in the Authority the authority to administer the Tidelands Trust as to such  
16 property; and,

17 WHEREAS, The Tidelands Trust prohibits the sale of Tidelands Trust property into  
18 private ownership, generally requires that Tidelands Trust property be accessible to the public  
19 and encourages publicly oriented uses of trust property that, among other things, attract  
20 people to the waterfront, promote public recreation, protect habitat and preserve open space;  
21 and,

22 WHEREAS, The Board of Supervisors approved the designation of the Authority as a  
23 redevelopment agency with powers over Treasure Island in Resolution No. 43-98, dated  
24 February 6, 1998; and

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1           WHEREAS, Under the Act and the Authority's Articles of Incorporation and Bylaws, the  
2 Authority, acting by and through its Board of Directors has the power, subject to applicable  
3 laws, to sell, lease, exchange, transfer, convey or otherwise grant an interest in or right to use  
4 or occupy all or any portion of the real property located on the Base; and,

5           WHEREAS, The City and County of San Francisco (the "City") wishes to sublease  
6 certain property on Treasure Island commonly known as the Austin Hall Complex (Buildings  
7 461, 462, and 463), the Gymnasium Building (Building 402), the Ship Shape Building (Building  
8 497), and related outdoor and parking areas (collectively, the "Premises") from the Authority  
9 for training activities and for the proposed location of a regional Police Academy for the City's  
10 Police Department; and,

11          WHEREAS, An appraisal of the Premises indicates that the fair market rental value of  
12 the Premises is \$1,200,000 per year; and

13          WHEREAS, the Gymnasium and the Ship Shape Building are located within the area  
14 currently contemplated for redevelopment by a primary developer for which the Authority has  
15 previously authorized the issuance of a Request for Qualifications; but, the City nevertheless  
16 wishes to sublease the entire Premises until June 30, 2002; and,

17          WHEREAS, The Police Department has occupied and used the facilities for training  
18 activities since July 1, 2000; and

19          WHEREAS, The proposed sublease involves the reuse of existing buildings and  
20 facilities; and

21          WHEREAS, On November 3, 1997 the Planning Department of the City and County of  
22 San Francisco determined that such interim reuses as the proposed sublease are  
23 categorically exempt under the California Environmental Quality Act (CEQA) and Sections  
24 15301, 15303, 15304(e), and 15061(b)(3) of the State Guidelines; and

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1           WHEREAS, A copy of the proposed sublease with the City for the Police Academy is  
2 attached to this Resolution as Exhibit A; now therefore, be it

3           RESOLVED: That the Board of Directors hereby reaffirms and adopts the finding of  
4 the Planning Department of the City and County of San Francisco (the "Planning  
5 Department") that the interim reuse of the Premises as proposed by the City is categorically  
6 exempt under CEQA for the reasons stated in the Certificate of Determination dated  
7 November 3, 1997 by the Planning Department, a copy of which is on file in the offices of the  
8 Authority; and

9           FURTHER RESOLVED: That the Board of Directors hereby authorizes the Executive  
10 Director or her designee to enter into a sublease retroactive to July 1, 2000 with the City and  
11 County of San Francisco for the Premises for use as a Police Academy as follows: the entire  
12 Premises at the annual rent of \$1,200,000 per year for a term not to exceed June 30, 2001;  
13 and

14           FURTHER RESOLVED: That the sublease between the City and the Authority shall be  
15 in substantially the form of the Sublease attached hereto as Exhibit A; and

16           FURTHER RESOLVED: That the Executive Director is hereby authorized to take any  
17 and all actions deemed necessary by the Executive Director in consultation with the City  
18 Attorney's Office to carry out the intent of this resolution, including without limitation, the  
19 amendment of any leases with the Navy.

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6 CERTIFICATE OF SECRETARY  
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8 I hereby certify that I am the duly elected and acting Secretary of the  
9 Treasure Island Development Authority, a California nonprofit public benefit  
10 corporation, and that the above Resolution was duly adopted and approved by the  
11 Board of Directors of the Authority at a properly noticed meeting on May 9, 2001  
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14 John Elberling  
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INTERIM SUBLEASE

between

THE TREASURE ISLAND DEVELOPMENT AUTHORITY

as Sublandlord

and

CITY AND COUNTY OF SAN FRANCISCO

as Subtenant

For the Interim Sublease of

Buildings 402, 461, 462, 463, and 497 at former Naval Station Treasure Island  
San Francisco, California

July 1, 2000

## TREASURE ISLAND SUBLEASE

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**LIST OF EXHIBITS:**

EXHIBIT A -- Master Lease

EXHIBIT B -- Drawing of Premises

EXHIBIT C -- Seismic Report

EXHIBIT D – Management Plan

EXHIBIT E – Emergency/Contingency Plan

EXHIBIT F -- List of Prior Improvements Installed

EXHIBIT G - List of Additional Improvements to be Installed

EXHIBIT H - List of Master Landlord's Personal Property

EXHIBIT I - Memorandum of Agreement

## TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated as of July 1, 2000, is by and between the Treasure Island Development Authority ("Sublandlord") and the CITY AND COUNTY OF SAN FRANCISCO ("Permittee"), acting by and through its Director of Property on behalf of the Police Department. From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

A. Pursuant to that certain Police Academy/Sheriff Master Lease (the "Master Lease"), by and between the Authority and the Department of Navy (the "Navy"), dated April 5, 1999, a copy of which is attached hereto as Exhibit A, the Authority has the right to use those portions of Naval Station Treasure Island commonly referred to as the Austin Hall Complex (Buildings 461, 462, and 463), the Gymnasium (Building 402), the Ship Shape (Building 497), and any related outdoor and parking areas, all as depicted on Exhibit B hereto (collectively, the "Premises")

B. Subtenant desires to sublet all of the Premises from Sublandlord and Sublandlord is willing to sublet the Premises to Subtenant on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

### 1. PREMISES

1.1. **Subleased Premises.** Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises, including the improvements thereon.

#### 1.2. **As Is Condition of Premises.**

(a) **Inspection of Premises.** Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them, ("Subtenant's Agents") of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are useable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic Report referenced in Section 1.2(c) below and the Joint Inspection Report referenced in Section 6 of the Master Lease.

(b) **As Is; Disclaimer of Representations.** Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS"

condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises governing the use, occupancy, management, operation and possession of the Premises (together, "Laws"). Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord nor any of its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below) (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use of Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or sub-subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

Notwithstanding the foregoing, Sublandlord warrants its authority to enter into this Sublease.

(c) **Seismic Report and Structural Report.** Without limiting Section 1.2 (b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions,*" prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco, (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that the structures or improvements located on or about the Premises, may fail structurally and collapse.

## 2. COMPLIANCE WITH MASTER LEASE

**2.1. Incorporation by Reference.** All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein.

**2.2. Conflict.** If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then for purposes of determining the rights and obligations of the Sublandlord and the Subtenant insofar as they relate to one another, the terms of this Sublease shall govern. Any specific references to the applicability of certain provisions of the Master Lease to Subtenant shall not in any way diminish or limit the effectiveness of Subtenant's covenant to generally comply with and perform Lessee's obligations under the Master Lease as provided in Section 2.4 below.

**2.3. Performance of Master Landlord's Obligations.** Sublandlord does not assume the obligations of Master Landlord under the Master Lease. With respect to work, services, repairs, restoration, the provision of utilities, or HVAC services, or the performance of any other obligations required of Master Landlord under the Master Lease, Sublandlord's sole obligation with respect thereto shall be to request the same, on request in writing by Subtenant, and to use reasonable efforts to obtain the same from Master Landlord. Subtenant shall cooperate with Sublandlord as may be required to obtain from Master Landlord any such work, services, repairs, repainting, restoration, the provision of utilities, or HVAC services, or the performance of any of Master Landlord's obligations under the Master Lease.

**2.4. Compliance with Master Lease.** Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord. Sublandlord acknowledges that Subtenant's activities permitted hereunder do not violate the terms of the Master Lease.

**2.5. Automatic Termination.** If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease. The parties hereby acknowledge that the Master Lease is currently scheduled to terminate on April 4, 2004. Sublandlord hereby covenants to use good faith efforts to seek an extension of the Master Lease or other acquisition of the Premises from Master Landlord to enable the parties to complete the Term of this Sublease. Sublandlord further covenants to use good faith efforts to obtain Master Landlord's consent to this Sublease.

### 3. TERM

**3.1. Term of Sublease.** The term for all portions of the Premises shall commence on the date which is the later of the date upon which (i) the City's Mayor and Board of Supervisors shall have approved the transaction contemplated by this Sublease, in their respective sole and absolute discretion, (ii) Sublandlord's Commission adopts a resolution approving this Sublease, (iii) the Parties hereto have duly executed and delivered this Sublease, and (iv) Master Landlord has approved this Sublease (collectively, the "Commencement Date"). The term for the Premises shall expire on June 30, 2002, subject to Section 2.5 above and unless sooner terminated pursuant to the terms of this Sublease.

**3.2. Effective Date.** The parties hereby agree that the effective date of this Sublease shall be July 1, 2000 (the "Effective Date").

**3.3. Early Termination.** Either party may without cause terminate this Sublease as to all or any portion of the Premises prior to the Expiration Date by giving the other party thirty (30) days advance written notice of such early termination date. If this Sublease is terminated as to only a portion of the Premises, then the Base Rent shall be adjusted to reflect the prorata reduction in the total size of the Premises, and all further references to the "Premises" herein shall apply to the reduced Premises.

### 4. RENT

**4.1. Annual Base Rent.** Throughout the term beginning on the Commencement Date, Subtenant shall pay to Sublandlord One Million Two Hundred Thousand Dollars (\$1,200,000.00) per year (the "Base Rent"). Base Rent shall be paid to the Sublandlord annually in advance, without prior demand and without any deduction, setoff, or counterclaim whatsoever. Except as stated below, the Base Rent shall be payable on the Commencement Date and each annual anniversary of the Commencement Date thereafter at the Notice Address of Sublandlord provided in Section 21.1 hereof or such other place as the Landlord may designate in writing. If this Sublease terminates as to all or any portion of the Premises on a date other than a date which is a full twelve months from the date of the last annual payment of Base Rent, then the Base Rent for such fractional year shall be prorated based on a twelve (12) month, thirty (30) days per month year.

**4.2. Additional Charges.** In addition to Base Rent, Subtenant shall pay any and all costs, impositions and expenses, or charges otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, (i) the common area maintenance charge assessed by the Master Landlord against the Premises in the amount not to exceed \$3,170.00 per month (the "Common Charge"), (ii) landscaping charges associated with the Premises at the rate of \$2,600.00 per month (the "Landscaping Charge"), and (iii) all late charges and default interest and all utility charges (as set forth in Section 8.2 below) (together, the "Additional Charges"). The Additional Charges shall be payable without set-off or counterclaim. Together, Base Rent and the Additional Charges shall hereinafter be referred to as the "Rent".

**4.3. Late Charge.** If Subtenant fails to pay any Rent within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

**4.4. Default Interest.** If any Rent is not paid within thirty (30) days following the due date, such unpaid amount shall bear interest from such date until paid at the rate of ten percent (10%) per year. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

## 5. TAXES, ASSESSMENTS AND OTHER EXPENSES

### 5.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) **Payment Responsibility.** During the Term of this Sublease, Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any improvements to the Premises, Subtenant's personal property, or Subtenant's use of the Premises. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject, however, to Subtenant's right to challenge or protest any of such levies or assessments. Notwithstanding the foregoing, Subtenant shall have the right, at Subtenant's sole cost and expense, to contest the validity of any tax, assessment, excess, license, permit fee or other charge or imposition provided that (i) Subtenant gives Sublandlord written notice of Subtenant's intention to do so at least 10 days prior to delinquency, (ii) Subtenant diligently prosecutes any such contest and at all times effectually stays or prevents any official or judicial foreclosure of the Sublease, and (iii) Subtenant pays any final judgments forcing any such tax, assessment, excise, permit fee or charge so contested. Sublandlord shall, if requested, cooperate with Subtenant at any such proceedings at Subtenant's expense. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums within twenty (20) days after demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Subtenant recognizes that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in any event prior to foreclosure thereof.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may reasonably request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

(e) **Evidence of Payment.** Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof, subject to Subtenant's rights to protest and challenge.

**5.2. Other Expenses.** This is a "triple net" Sublease. Accordingly, Subtenant shall be solely responsible for any and all charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any alterations permitted thereon, including, without limitation, the cost of any utilities (as set forth in Section 8.2 below), repairs, maintenance or services necessary for Subtenant's use.

## 6. USE; COVENANTS TO PROTECT PREMISES

**6.1. Subtenant's Permitted Use.** Subtenant may use the Premises to conduct classroom and other related activities for the purpose of training police officers, all in accordance with a management plan (the "Management Plan"), attached hereto as Exhibit D. Subtenant shall not permit any portion of the Premises to be used as a shooting range by any of Subtenant's trainees, peace officers, personnel, or invitees. Subtenant acknowledges that there are residential dwellings and a public elementary school in the general vicinity of the Premises, and Subtenant agrees to use good faith efforts to prevent any interference with such residential and public school activities by Subtenant's use of the Premises. Subtenant shall not use the Premises, or any portion thereof, for any other purposes than those stated hereinabove. Subtenant shall not amend or otherwise modify the Management Plan without Sublandlord's prior written approval.

**6.2. Limited Access for Other Residents of Treasure Island.** Subtenant agrees to make the gymnasium (Building 402) and the theater portion of the Austin Hall Complex (Buildings 461, 462, and 463) of the Premises available to residents of Treasure Island during certain hours in the afternoon, evenings, and weekends, all as set forth in the Management Plan attached as Exhibit D.

**6.3. Subtenant's Access to the Premises.** As provided in Section 29 of the Master Lease, Subtenant will have access to the Premises on a 24-hour, seven-days-a-week basis.

provided however, Subtenant shall coordinate such access with the local representative of Master Landlord.

**6.4. Rules and Regulations.** Subtenant agrees to adhere to all rules and regulations regarding the Premises or the Property, including, without limitation, rules and regulations regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time.

**6.5. Easements.** This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord under the Master Lease to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"), provided that, as provided in Section 28 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities. Sublandlord is not aware of any Additional Easements or other encumbrances which would interfere with Subtenant's use of the Premises. Provided, however, that if the exercise by Master Landlord of any of such rights shall effectively deprive Subtenant of the use of all or such a significant portion of the Premises as to render the remaining portion of the Premises untenantable or unsuitable for continued use by Subtenant as contemplated under this Sublease for more than thirty (30) days, then Subtenant may terminate this Sublease upon thirty (30) days notice, subject to the surrender provisions of Section 18.1 below. If the Master Landlord exercises any of such rights in a manner and under circumstances where this Sublease is not terminated as set forth above, then Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises deprived from Subtenant by Master Landlord bears to the area of the Premises prior to Master Landlord's exercise of its rights.

**6.6. No Interference with Navy Operations.** Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over the Subtenant's use of the Premises in the event of any conflict, provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.

**6.7. No Unlawful Uses, Nuisances or Waste.** Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall eliminate any nuisances or hazards caused by Subtenant or its Agents or Invitees on or about the Premises.

## 7. ALTERATIONS

**7.1. Construction of Alterations.** Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may be given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any permitted Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of such construction at all times.

**7.2. Permitted Alterations.** Sublandlord and Subtenant hereby acknowledge that Subtenant has previously performed with Sublandlord's permission those alterations to the Premises described in Exhibit F. Subtenant shall perform those alterations to the Premises as described in Exhibit G. Subtenant shall also be responsible for making all improvements to the Premises necessary for the use described in Section 6.1 above, and Subtenant shall perform all alterations needed to bring the Premises into compliance with all building requirements required by the Department of Building Inspection of the City and County of San Francisco, including without limitation, seismic safety and accessibility requirements. The alterations described in Exhibit G are collectively referred to herein as the "Permitted Alterations", and Subtenant shall obtain Sublandlord's prior written approval (which approval shall not be unreasonably withheld or delayed) for any other alterations that Subtenant is required to perform under this Sublease.

**7.3. Ownership of Alterations.** Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of Section 7.1 above shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove any Alterations (other than the Approved Work) from the Premises in accordance with the provisions of Section 18 hereof if Sublandlord, at its sole option and without limiting any of the provisions of Section 7.1 above, requires as a condition to approval of any such Alterations or consented that such Alterations be removed from the Premises following the expiration or termination of this Sublease.

**7.4. Subtenant's Personal Property.** All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and may be removed by it subject to the provisions of Section 18 hereof. The foregoing notwithstanding, Subtenant hereby acknowledges and agrees that all personal property located on the Premises and described in Exhibit H hereto is the property of the Master Landlord and not Subtenant's.

## 8. REPAIRS AND MAINTENANCE

**8.1. Subtenant Responsible for Maintenance and Repair.** Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall protect and maintain the Premises and keep the Premises in good order and repair. Among other things, Subtenant shall provide its own security for the Premises. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, that may be necessary to maintain the Premises at all times in clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided however, that Subtenant shall not be required to make any Alterations or repairs (structural or otherwise) to the Premises which are not related to Subtenant's use of the Premises or to correct conditions affecting the Premises which existed prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition. Without limiting the foregoing, Subtenant specifically acknowledges and agrees to comply with the Protection and Maintenance Service provisions of Section 12 of the Master Lease.

**8.2. Utilities.** Subtenant shall be solely responsible for obtaining and shall pay all charges when due and owing for all utility services to the Premises, including, without limitation, all water, gas, heat, light, power, sewer, electricity, refuse, waste disposal and telecommunications services. Upon request, Subtenant shall promptly furnish Sublandlord with copies of all paid receipts for such utilities and charges.

**8.3. No Right to Repair and Deduct.** Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or and any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

## 9. LIENS

Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord as Additional Charges by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises other than the Approved Work.

## 10. COMPLIANCE WITH LAWS

**10.1. Compliance with Laws.** Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, including, without limitation, all Laws relating to health and safety, the San Francisco Bay or shoreline use, and disabled accessibility (such as the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 *et seq.* and Title 24 of the California Code of Regulations), to the extent applicable whether foreseen or unforeseen, ordinary as well as extraordinary, provided, however, that Subtenant shall not be required to make any Alterations other than Alterations, if any, included in the Approved Work in order to comply with such Laws unless such Alterations shall be occasioned by the Approved Work or any other Alterations, or Subtenant's use of the Premises, or any act or omission of Subtenant, its Agents or Invitees. Notwithstanding the foregoing, no occurrence or situation arising during the term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

**10.2. Regulatory Approvals.** Subtenant understands and agrees that Subtenant's use of the Premises and construction of Alterations permitted hereunder (including the Approved Work) may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. To the extent such approvals or permits are required, Subtenant shall be solely responsible for obtaining any and all such regulatory approvals. Except in the case of the Approved Work, Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord, which consent shall not be unreasonably withheld. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be timely and promptly paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") the Sublandlord and the Master Landlord including, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties") against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval, except to the extent such Losses are caused by Sublandlord's negligence or willful misconduct.

**10.3. Compliance with Sublandlord's Risk Management Requirements.** Subtenant shall not do anything, or permit anything to be done, in or about the Premises or any Alterations

permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall also comply with all of the provisions of the Emergency/Contingency Plan attached hereto as Exhibit E.

## 11. ENCUMBRANCES

**11.1. Encumbrance By Subtenant.** Without the prior written consent of Sublandlord, not to be unreasonably withheld, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

## 12. DAMAGE OR DESTRUCTION

**12.1. Damage or Destruction to the Premises.** In the case of damage to or destruction of the Premises by earthquake, fire or any other casualty not caused by Subtenant, whether insured or uninsured, which prevents Subtenant from using the Premises for the purposes described herein, Subtenant may terminate this Sublease upon thirty (30) days' prior written notice to Sublandlord, and upon any such termination Subtenant shall surrender the Premises in accordance with Section 18 hereof and both parties shall be relieved of any liability for such termination or for repairing such damage. If Subtenant does not terminate this Sublease as provided in this Section 12.1, Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of Section 7.1 above.

**12.2. No Abatement in Rent.** In the event of any damage or destruction to the Premises, and if Subtenant does not terminate this Sublease as provided in Section 12.1 above, there shall be no abatement in the Rent payable hereunder.

**12.3. Waiver.** The Parties understand and agree that the foregoing provisions of this Section 12 are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and the Sublandlord and Subtenant each hereby waives and releases any right to terminate this Agreement in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

## 13. ASSIGNMENT AND SUBLetting

**13.1. Restriction on Assignment and Subletting.** Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, its agents, employees, members, officers or members or representatives, or sublet any portion of the Premises, without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion.

## 14. DEFAULT; REMEDIES

**14.1. Events of Default.** Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

(a) **Rent.** Any failure to pay Rent or other sums, including sums due for utilities, within ten (10) days after such sums are due, which is not cured within five (5) days after written notice thereof by Sublandlord.

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease, provided Subtenant shall have a period of thirty (30) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 30-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly commences action to cure such default within such 30-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.

(c) **Vacation or Abandonment.** Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not Released, discharged, dismissed or vacated within sixty (60) days.

**14.2. Remedies.** Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies provided by law California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the

Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

**14.3. Sublandlord's Right to Cure Subtenant's Defaults.** If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord where prior notice by Sublandlord is impractical), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all reasonable sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

## 15. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION

**15.1. Release and Waiver of Claims.** Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties and Master Landlord shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from causes whatsoever, including without limitation a partial or complete collapse of any improvements on the Premises due to an earthquake or subsidence, except only to the extent such Losses are caused by the negligence or willful misconduct of the Indemnified Parties. Without limiting the generality of the foregoing:

(a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by

Subtenant pursuant to this Sublease regardless of the cause, except to the extent such Losses are caused by Sublandlord's negligence or willful misconduct.

(b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any claims for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.

(c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use, except to the extent such Losses are caused by the negligence or willful misconduct of the Indemnified Parties.

(d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance from the Indemnified Parties under federal and state relocation assistance laws.

(e) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 15.1, excepting those arising from the negligence or willful misconduct of the Indemnified Parties.

(f) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(g) Subtenant has made such investigation of the facts pertaining to these waivers and releases it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(h) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Subtenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

(i) Nothing herein shall limit or otherwise relieve Master Landlord from Master Landlord's obligations under Master Landlord's environmental indemnity described in Section 19.3 below, the Federal Tort Claims Act, or any other applicable laws.

**15.2. Subtenant's Indemnity.** Except as otherwise provided in Section 19, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses, incurred in connection with or arising out of Subtenant's use of the Premises, including, without limitation: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Invitees, (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Invitees, occurring in, on or about the Premises (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) any construction or other work undertaken by Subtenant on or about the Premises whether before or during the Term of this Sublease; or (f) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Invitees, or of any trespassers, in, on or about the Premises or any Alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such losses are caused by the negligence or intentional wrongful acts or omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease.

## 16. INSURANCE

**16.1. Subtenant's Insurance.** Sublandlord acknowledges that Subtenant maintains a program of self-insurance and agrees that Sublandlord shall not be required to carry any third-party comprehensive general liability insurance or other insurance with respect to this Sublease. Subtenant assumes the risk of damage to any of its personal property, except to the extent caused by the negligence or willful misconduct of Sublandlord.

## 17. ACCESS BY SUBLANDLORD

### 17.1. Access to Premises by Sublandlord.

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as reasonably determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and remain on the Premises throughout the period of such emergency, not to exceed fourteen (14) days. Sublandlord shall have the right to use any and all means Sublandlord reasonably considers appropriate to gain access to any portion of the Premises in an emergency, and Sublandlord shall have the right to alter or remove any Alterations or Subtenant's Personal Property as Sublandlord reasonably determines is necessary to respond to such emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting from the negligence or willful misconduct of Sublandlord or Sublandlord's Agents.

**17.2. Access to Premises by Master Landlord.** Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

## 18. SURRENDER

**18.1. Surrender of the Premises.** Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in good condition, order and repair, free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's own Personal Property from the Premises and

demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 7.2 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980 *et seq.* of the California Civil Code or in any other manner allowed by Law.

If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises.

## 19. HAZARDOUS MATERIALS

**19.1. No Hazardous Materials.** Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 *et seq.*) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials other than materials that are part of the structure of any existing improvements on the Premises which is not disturbed by any activity of Subtenant or its Agents or Licensees, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous

Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Without limiting the foregoing, Subtenant acknowledges and agrees that it shall be bound by and will comply with the environmental protection provisions provided for in Section 13 of the Master Lease.

**19.2. Subtenant's Environmental Indemnity.** If Subtenant breaches any of its obligations contained in Section 19.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leaching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 15.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials caused by Subtenant or its Agents or Invitees, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and reasonable attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release caused by Subtenant or its Agents or Invitees. The foregoing indemnity shall not include Losses arising as a result of pre-existing Hazardous Materials on, at, in or about the Premises unless and to the extent Subtenant or its Agents or Invitees causes the Release of or exacerbates the condition of such pre-existing Hazardous Materials. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any non-pre-existing Hazardous Materials in, on, under or about the Premises or the Property, Subtenant shall, immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises, and shall, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

**19.3. Master Landlord's Environmental Indemnity.** The Parties hereby acknowledge and agree that, pursuant to Section 330 of Public Law 102-484, as amended, Master Landlord is required to hold harmless, defend and indemnify the Sublandlord and Subtenant from

and against any suit, claim, demand, action, liability, judgment, cost or fee, arising out of any claim for personal injury or property damage (including death, illness, loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant, contaminant, petroleum product, or petroleum derivative from or on the Premises as a result of Department of Defense activities at the Property. Accordingly, except as specifically provided in Section 19.2 above, Subtenant is not responsible for any remediation activities with respect to the presence of Hazardous Materials on the Premises prior to the Commencement Date.

**19.4. Acknowledgment of Receipt of EBS and FOSL Reports.** Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease.

## **20. SECURITY DEPOSIT**

**20.1. Security Deposit.** Sublandlord hereby waives any requirement for a security deposit for Subtenant's right to use the Premises in accordance with the terms and conditions of this Sublease.

## **21. GENERAL PROVISIONS**

**21.1. Notices.** Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid as follows:

Notice Address of Sublandlord:

Treasure Island Development Authority  
Treasure Island Project Office  
401 Palm Avenue  
Building 1, Room 217  
Treasure Island  
Attn: Executive Director  
Tel. No.:415-274-0600  
Fax No.: 415-274-0299

with a copy to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Michael S. Cohen  
Tel No.:415-554-4722  
Fax No.: 415 554-4755

Notice Address of Subtenant:

City and County of San Francisco  
Department of Real Estate  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Julian Sutherland  
Tel No.: 415-554-9866  
Fax No.: 415-552-9216

with a copy to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Donnell W. Choy  
Tel. No.: 415-554-4736  
Fax No.: 415-554-4755

Notice Address of Master Landlord: BRAC Operations Office

Southwest Division  
1220 Pacific Highway  
San Diego, California 92132-5190

Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 21.1 and applicable Laws, shall be deemed receipt of such notice.

**21.2. Controller's Certification of Funds.** The terms of this Sublease shall be governed by and subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco. Notwithstanding anything to the contrary contained in this Sublease, there shall be no obligation for the payment or expenditure of money by Subtenant under this Sublease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 6.302 of the Charter of the City and County of San Francisco, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Initial Term of this sublease commences, sufficient funds for the payment of Rent and any other payments required under this Sublease are not appropriated for any reason, then Subtenant may terminate this Lease, without penalty, liability or expense of any kind to Subtenant, as of the last date on which sufficient funds are appropriated. Subtenant shall use its reasonable efforts to give Sublandlord reasonable advance notice of such termination.

**21.3. No Implied Waiver.** No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Rent during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease. The provisions of this Section 21.3 shall be mutual to the extent applicable.

**21.4. Amendments.** Neither this Sublease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

**21.5. Authority.** The person signing below for Sublandlord represents and warrants that Sublandlord is a non-profit, public benefit corporation, and an instrumentality of the State of California and the City and County of San Francisco, and that he or she has the right and authority to execute this Sublease. If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosure set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

**21.6. Joint and Several Obligations.** The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.

**21.7. Interpretation of Sublease.** The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar

days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City of San Francisco holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

**21.8. Successors and Assigns.** Subject to the provisions of Section 13, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.

**21.9. Brokers.** Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

**21.10. Severability.** If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

**21.11. Governing Law.** This Sublease shall be construed and enforced in accordance with the Laws of the State of California.

**21.12. Entire Agreement.** This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties regarding the interim subleasing of the Premises and supersedes all prior written or oral negotiations, discussions, understandings and agreements with respect thereto. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this

Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein.

**21.13. Attorneys' Fees.** In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees.

**21.14. Time of Essence.** Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.

**21.15. Cumulative Remedies.** All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

**21.16. Survival of Indemnities.** Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof.

**21.17. Relationship of Parties.** Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

**21.18. Recording.** Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county without the consent of Sublandlord.

**21.19. Non-Liability of Indemnified Parties' officials, employees and Agents.** No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant or its successors and assigns in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant or its successors and assigns, or for any obligation of Sublandlord under this Agreement.

**21.20. Counterparts.** This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**21.21. Master Landlord's Consent.** This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord

**21.22. Consent by Sublandlord.** Where consent of Sublandlord is required hereunder, Subtenant may rely on any written consent granted by Sublandlord's Executive Director or her designee.

## 22. SPECIAL PROVISIONS

**22.1. Signs.** Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises, without Sublandlord's and Master Landlord's prior written consent, which Sublandlord and Master Landlord may grant or withhold in their sole and absolute discretion.

**22.2. Prevailing Wages.** With respect to the construction of the Approved Work or any Alterations, any employee performing services for Subtenant shall be paid not less than the highest prevailing rate of wages as required by Section A7.204 of the City and County of San Francisco Charter and Sections 6.33 through 6.45 of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California.

**22.3. Public Transit Information.** Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Building and encouraging use of such facilities, all at Subtenant's sole expense.

### 22.4. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) **Covenant Not to Discriminate.** In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Subtenant, in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) **Sub-Subleases and Other Subcontracts.** Subtenant shall include in all sub-subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such sub-subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all sub-subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all sub-subtenants and other subcontractors to comply with such

provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) Non-Discrimination in Benefits. Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations in San Francisco or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the Sublease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

**22.5. No Relocation Assistance; Waiver of Claims.** Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated or expires by its own terms, and Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 *et seq.*), except as otherwise specifically provided in this Sublease with respect to a Taking.

**22.6. MacBride Principles - Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1. *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**22.7. Tropical Hardwood Ban.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.

**22.8. Conflicts of Interest.** Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.

**22.9. Charter Provisions.** This Sublease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

**22.10. Prohibition of Tobacco Advertising.** Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the Sublandlord, including the Premises and the Property. This prohibition includes the placement of the name of a company producing selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

Sublandlord and Subtenant have executed this Sublease in duplicate as of the date first written above.

**SUBTENANT:**  
**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

By: \_\_\_\_\_  
Its: Director of Property

**SUBLANDLORD:**  
**THE TREASURE ISLAND DEVELOPMENT**  
**AUTHORITY**

By: \_\_\_\_\_  
Its: Executive Director

Approved as to Form:

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Deputy City Attorney

Approved:

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Base Conversion Manager  
U.S. Navy  
Engineering Field Activities West



**AGENDA ITEM**  
**Treasure Island Development Authority**  
***City and County of San Francisco***

**Subject:** Resolution approving an Interim  
Sublease with the Treasure Island Yacht Club for  
Building 298.

**Agenda No:** 8

**Contact Person/Phone:** Marianne Conarroe  
(415) 274-0660

**Meeting Date:** 05/09//2001

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**SUMMARY OF PROPOSED ACTION:**

This item is seeking approval of the Authority for an interim sublease with the Treasure Island Yacht Club Building 298 on Treasure Island.

**BACKGROUND:**

In September 2000, the Authority authorized the Executive Director to enter into sole source negotiations with the Treasure Island Yacht Club (TIYC) for an interim sublease for Building 298. (Exhibit A). Negotiations have been completed and a sublease now needs the approval of the Authority prior to execution of the sublease.

As part of the operational closure of Naval Station Treasure Island, the Treasure Island Yacht Club was given an eviction notice (similar to other tenants located on the Base) to vacate the club house, Building 183. Prior to their departure, the TIYC had been a presence on the island since the mid 1960's. Since its departure from Treasure Island, the TIYC held meetings at various other locations and yacht clubs facilities around the Bay Area. The Reuse Plan for the Base contemplates the return of TIYC to a new clubhouse once the marina expansion was complete. However, the TIYC met with Authority staff to explore the possibility of creating an interim meeting space in Building 298.

Since its departure, the TIYC has not been able to invite other yacht clubs to anchor at Clipper Cove and enjoy the beauty of Treasure Island. By reestablishing a presence on Treasure Island, TIYC can offer reciprocal privileges to other Yacht Club organizations around the Bay Area. These reciprocal privileges would expand the range of boating experiences in the Bay Area, thus providing a region-wide public benefit.

During negotiations, Authority staff asked the City's Department of Building Inspection (DBI) to inspect the facility to determine if any work will be necessary to address code requirements. Any such improvements required by DBI, (including corrections for the seismic safety to meet FEMA 178 Life Safety Standards) is the responsibility of TIYC.

Membership of the TIYC have been in discussions with the Treasure Island Enterprises to work out shared parking arrangements. The Sublease provides that the Sublease will automatically terminate if the Authority enters into a lease for the development or redevelopment of the Treasure Island Marina which includes Building 298.

**TERM**

The interim sublease expires on June 30, 2002 with five (5) one-year options.

**BASE RENT**

The monthly rent for the lease premises is \$450.00 (Four Hundred Fifty Dollars) for the first term. Should TIYC elect to exercise an extension of the term, the monthly rent will increase to \$650.00 (Six Hundred Fifty Dollars) for the first extension, and \$950.00 (Nine Hundred Fifty Dollars) for the second extension term, \$1,125.00 (One Hundred Twenty Five Dollars) for the third extension term, and adjusted upwards according to increases in the Consumer Price Index (CPI) thre้าter.

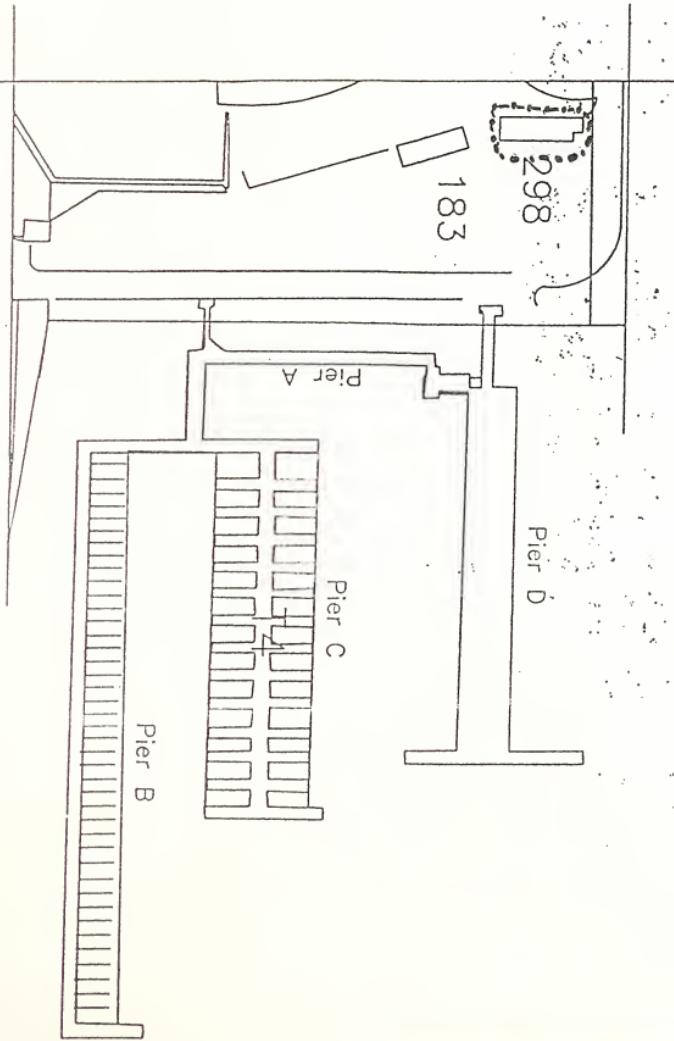
**CONCLUSION**

Since TIYC was a former tenant on the Island and execution of an interim sublease will not impact long-term redevelopment efforts, staff is recommending that the Authority approve the interim sublease for Building 298 with the Treasure Island Yacht Club.



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1 [Treasure Island Yacht Club Interim Sublease]

2 RESOLUTION APPROVING AND AUTHORIZING THE TREASURE ISLAND  
3 DEVELOPMENT AUTHORITY TO EXECUTE AN INTERIM SUBLEASE WITH THE  
4 TREASURE ISLAND YACHT CLUB FOR BUILDING 298.

5 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
6 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
7 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority  
8 as a redevelopment agency under California redevelopment law with authority over former  
9 Naval Station Treasure Island (the "Base"), and (ii), with respect to those portions of the Base  
10 which are subject to the public trust for commerce, navigation and fisheries (the "Tidelands  
11 Trust"), vested in the Authority the authority to administer the Tidelands Trust as to such  
12 property; and,

13 WHEREAS, The Board of Supervisors approved the designation of the Authority as a  
14 redevelopment agency with powers over Treasure Island in Resolution No. 43-98, dated  
15 February 6, 1998; and

16 WHEREAS, The Tidelands Trust prohibits the sale of trust property into private  
17 ownership, generally requires that Tidelands Trust property be accessible to the public and  
18 encourages public-oriented uses of trust property that, among other things, attract people to  
19 the waterfront, promote public recreation, protect habitat and preserve open space; and

20 WHEREAS, the Tidelands Trust prohibits the sale of trust property into private  
21 ownership, generally requires the Tidelands Trust property be accessible to the public and  
22 encourages public-oriented uses of trust property that, among other things, attract people to  
23 the waterfront, promote public recreation, protect habitat and preserve open space; and

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1            WHEREAS, In order to facilitate productive reuse and job creation on the Base, it may  
2 be beneficial to the Authority to lease or license property from the Navy and, in turn sublease  
3 or sublicense such property to third-parties or use such property for municipal purposes; and

4            WHEREAS, At its September 13, 2000 meeting, the Authority approved and authorized  
5 the Executive Director to enter into sole source negotiations with the Treasure Island Yacht  
6 Club for an interim lease of Building 298 on Treasure Island; and

7            WHEREAS, the Authority staff and the Treasure Island Yacht Club have negotiated the  
8 terms and conditions of an interim sublease for Building 298 expiring June 30, 2002 with five  
9 (5) options to extend for one year in the form attached hereto as EXHIBIT A (the "Sublease");  
10 and

11            WHEREAS, Rent for the Premises has been negotiated in the amount of \$450.00 (Four  
12 hundred Fifty Dollars) for the first term and should the options be exercised the monthly base  
13 rent will increase to \$650.00 (Six Hundred Fifty dollars) for the first extension, \$950.00 (Nine  
14 Hundred Fifty Dollars) for the second extension and \$1,125.00 (Eleven hundred Twenty-five  
15 dollars) for the third extension and adjusted according to increases in the Consumer Price  
16 Index (CPI) thereafter; and

17            WHEREAS, under the sublease the Treasure Island Yacht Club is permitted to use  
18 Building 298 as a meeting facility to support the Yacht Club's activities as a yacht club and  
19 may serve food and beverages in support of those activities; and

20            WHEREAS, the sublease requires the Treasure Island Yacht Club to present evidence  
21 to the Authority that it has entered into an agreement with Treasure Island Enterprises for the  
22 use of the Treasure Island Marina parking lot adjacent to the Premises; now, therefore be it  
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RESOLVED, that the Authority hereby approves and authorizes the Executive Director to enter into modifications to the Sublease (including, without limitation, the attachment or modification of exhibits) that are in the best interests of the Authority and the City, do not materially change the terms of the Sublease, and are necessary and advisable to effectuate the purpose and intent of this resolution.

## CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors and a properly noticed meeting on May 9, 2001.

John Elberling, Secretary



INTERIM SUBLEASE

between

THE TREASURE ISLAND DEVELOPMENT AUTHORITY

as Sublandlord

and

TREASURE ISLAND YACHT CLUB

as Subtenant

For the Interim Sublease of

Building 298 at former Naval Station Treasure Island  
San Francisco, California

May 9, 2001

## TREASURE ISLAND SUBLEASE

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## TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated as of May 9 2001, is by and between the Treasure Island Development Authority ("Sublandlord") and the Treasure Island Yacht Club, a California nonprofit mutual benefit corporation ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into the Treasure Island Marina Master Lease dated September 4, 1998 (the "Master Lease") for certain portions of that property commonly known as former Naval Station Treasure Island (the "Property"). Under the Master Lease, the Master Landlord leased to Sublandlord, among other things, that property commonly known as Building 298 (hereafter referred to as the "Premises") as depicted in Exhibit B, attached hereto and incorporated herein.

B. Subtenant has requested that Sublandlord lease the Premises to Subtenant, and Sublandlord is willing to sublease the Premises to Subtenant for a term ending on June 30, 2002, and thereafter renewable on a year-to-year basis at Sublandlord's sole and absolute discretion.

C. On May 9, 2001, the Board of Directors of Sublandlord adopted Resolution No. \_\_\_\_\_ authorizing the Executive Director of Sublandlord to enter into a sublease of the Premises as set forth hereinbelow.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

### 1. PREMISES

1.1. **Subleased Premises.** Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises, including the improvements thereon.

#### 1.2. As Is Condition of Premises.

(a) **Inspection of Premises.** Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors , and their respective heirs, legal representatives, successors and assigns, and each of them, ("Subtenant's Agents") of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are useable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic Report referenced in Section 1.2(c) below and the Joint Inspection Report referenced in Section 6 of the Master Lease.

(b) **As Is; Disclaimer of Representations.** Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises governing the use, occupancy, management, operation and possession of the Premises (together, "Laws"). Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord nor any of its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors , and their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below) (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use of Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or sub-subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

Notwithstanding the foregoing, Sublandlord warrants its authority to enter into this Sublease.

(c) **Seismic Report and Structural Report.** Without limiting Section 1.2 (b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions,*" prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco, (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit D. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that structures or improvements located on or about the Premises, may fail structurally and collapse.

## **2. COMPLIANCE WITH MASTER LEASE**

**2.1. Compliance with Master Lease.** Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or

provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord. Sublandlord acknowledges that Subtenant's activities permitted hereunder do not violate the terms of the Master Lease.

**2.2. Automatic Termination.** If (i) the Master Lease terminates for any reason whatsoever or (ii) Sublandlord enters into a lease or sublease with a developer for the development or redevelopment of the Treasure Island Marina which lease or sublease includes the Premises, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease. The parties hereby acknowledge that the Master Lease is currently scheduled to terminate on September 3, 2002.

### 3. TERM

**3.1. Term of Sublease.** The Premises are subleased for a term (the "Term") commencing on the Effective Date (as defined below), and expiring on June 30, 2002.

**3.2. Effective Date.** This Sublease shall become effective on the date (the "Effective Date") upon which (i) the Parties hereto have duly executed and delivered this Sublease and (ii) Sublandlord's Board of Directors has approved this Sublease.

**3.3. Options to Extend.** Subject to the provisions of Section 2.2 above, Subtenant shall have five (5) options to extend the Term of this Sublease as to the Premises (the "Extension Option") for an additional twelve (12) months (the "Extension Term") commencing upon June 30, 2002 or June 30 of such other year as the Term may have been extended pursuant to Subtenant's exercise of an Extension Option (each such date is hereafter referred to as an "Expiration Date") upon the following terms and conditions. Subtenant may exercise the Extension Option at any time during the Term but if it determines to do so it must give written notice to Sublandlord thereof not less than Ninety (90) days prior to the Expiration Date. Any such notice by Subtenant shall be irrevocable by Subtenant. If any event of default by Subtenant is outstanding hereunder either at the time of Subtenant's exercise of the Extension Option or at any time prior to the first day of the Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then Sublandlord may elect by notice to Subtenant to reject Subtenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void.

### 4. RENT

**4.1. Base Rent.** Throughout the Term, beginning on the sixty-first day following the Effective Date, Subtenant shall pay Sublandlord "Base Rent" equal to Four Hundred Fifty Dollars (\$450.00) per month. Subtenant shall not be required to pay Base Rent for the first sixty (60) days following the Effective Date. If the sixty-first day following the Effective Date falls in the middle of a month, Subtenant shall pay Sublandlord the prorata Base Rent for the number of days remaining in that month. If Subtenant elects to exercise the Extension Option, then the

Sublease for the Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Sublease, except that Base Rent hereunder shall be adjusted on the first day of each Extension Term (the "Adjustment Date") as follows: (i) Six Hundred Fifty Dollars (\$650.00) per month for the first Extension Term; (ii) Nine Hundred Dollars (\$900.00) per month for the second Extension Term; (iii) One Thousand One Hundred Twenty-Five Dollars (\$1,125.00) per month for the third Extension Term, and (iv) the Base Rent per month of the immediately preceding Extension Term as adjusted upwards in accordance with the provisions of Subsections 4.1(a) through 4.1(c) below for each of the remaining Extension Terms. Base Rent shall be paid to the Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. If the Effective Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than the last day of a calendar month, then the monthly payment of Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

(a) The Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"), which is published most immediately preceding the Adjustment Date (the "Adjustment Index"), shall be compared with the Index published most immediately preceding the Effective Date in the case of the first Adjustment Date or, in the case of any subsequent Adjustment Date, the Index published most immediately preceding the prior Adjustment Date (the "Base Index").

(b) If the Adjustment Index has increased over the Base Index, then the Base Rent payable on and after the Adjustment Date shall be set by multiplying the Base Rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Base Index. In no event shall the monthly Base Rent on or after the Adjustment Date be less than the monthly Base Rent in effect for the last full month immediately prior to the Adjustment Date.

(c) If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

**4.2. Additional Charges.** In addition to Base Rent, Subtenant shall pay any and all costs, impositions and expenses, or charges otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, the common area maintenance charge assessed by the Master Landlord against the Premises in the amount not to exceed \$22.50 per month (the "Navy CAM Charge"), all late charges and default interest and all utility charges (as set forth in Section 8.2 below) (together, the "Additional Charges"). The Additional Charges shall be payable without set-off or counterclaim, including, without limitation, the off-set for the Improvement Allowance described in Section 4.2 above. Within the time period that Subtenant submits Subtenant's Annual Review, as provided in Section 4.6(c) below, Sublandlord shall provide Subtenant a written summary of all Additional Charges actually incurred for the period covered by Subtenant's Annual Review. To the extent the Navy CAM Charge or any other Additional

Charges has been overpaid in any Sublease year, then Subtenant shall receive a credit against the next installment due of Base Rent or Additional Charges, and to the extent that Navy CAM Charge or any other Additional Charges has been underpaid, Subtenant shall pay the additional amount due within 30 days of such annual reconciliation. Together, Base Rent and the Additional Charges shall hereinafter be referred to as the "Rent".

**4.3. Late Charge.** If Subtenant fails to pay any Rent within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

**4.4. Default Interest.** If any Rent is not paid within thirty (30) days following the due date, such unpaid amount shall bear interest from such date until paid at the rate of ten percent (10%) per year. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

#### **4.5. Books, Records and Reports**

(a) **Books and Records.** Subtenant shall establish and maintain books, records and systems of account reflecting all business operations of Subtenant transacted under this Sublease (the "Books and Records"). Subtenant shall maintain such Books and Records at a reasonably accessible location within California.

(b) **Periodic Audits and Inspections of Records.** After providing Subtenant with 72 hours prior written notice and only during regular business hours, the Sublandlord, its representatives or an independent auditor may audit, examine and make excerpts, copies and transcripts from the Books and Records. The Sublandlord may perform such audit at any time and from time to time during the Term or for a period of three (3) years thereafter. The costs of any periodic audit shall be paid by the Sublandlord.

(c) **Transfer of Records and Accounts.** In the event of termination of this Sublease, Subtenant shall deliver copies of all Books and Records reasonably requested by the Sublandlord to Sublandlord within ten (10) days of such request.

### **5. TAXES, ASSESSMENTS AND OTHER EXPENSES**

#### **5.1. Taxes and Assessments, Licenses, Permit Fees and Liens.**

(a) **Payment Responsibility.** During the Term of this Sublease, Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges

and impositions of every description levied on or assessed against the Premises, any improvements to the Premises (including the Required Improvements, prorated for Subtenant's use of the Premises), Subtenant's personal property, or Subtenant's use of the Premises. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject, however, to Subtenant's right to challenge or protest any of such levies or assessments. Notwithstanding the foregoing, Subtenant shall have the right, at Subtenant's sole cost and expense, to contest the validity of any tax, assessment, excess, license, permit fee or other charge or imposition provided that (i) Subtenant gives Sublandlord written notice of Subtenant's intention to do so at least 10 days prior to delinquency, (ii) Subtenant diligently prosecutes any such contest and at all times effectually stays or prevents any official or judicial foreclosure of the Sublease, and (iii) Subtenant pays any final judgments forcing any such tax, assessment, excise, permit fee or charge so contested. Sublandlord shall, if requested, cooperate with Subtenant at any such proceedings at Subtenant's expense. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums within twenty (20) days after demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Subtenant recognizes that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) **No Foreclosure of Liens.** Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in any event prior to foreclosure thereof.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may reasonably request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

(e) **Evidence of Payment.** Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof, subject to Subtenant's rights to protest and challenge.

**5.2. Other Expenses.** This is a "triple net" Sublease. Accordingly, Subtenant shall be solely responsible for any and all charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any alterations permitted thereon, including, without limitation, the cost of any utilities (as set forth in Section 8.2 below), repairs, maintenance or services necessary for Subtenant's use.

## 6. USE; COVENANTS TO PROTECT PREMISES

**6.1. Subtenant's Permitted Use.** Subtenant may use the Premises as a meeting facility in support of Subtenant's activities as a yacht club. Subtenant may conduct food and beverage service on the Premises in support of their meetings and activities, provided such

service is in accordance with all applicable laws and the provisions of this Sublease. Subtenant shall not sublease or otherwise rent out the Premises to third parties for meetings or other activities without the prior written approval of Sublandlord, which approval Sublandlord may grant or withhold at Sublandlord's sole and absolute discretion. No sale of tobacco or tobacco related products shall be permitted. Subtenant may conduct food and beverage service, including alcohol beverage service as permitted under license from the California Alcoholic Beverage Commission on the Premises in support of their meetings and activities as a yacht club. Subtenant may not use the Premises, or any portion thereof, for any other purposes.

**6.2. Parking and Other Uses of Parking Area.** Subtenant acknowledges that there is no current parking associated with the Premises. As a condition precedent to the Effective Date of this Sublease, Subtenant must present to Sublandlord evidence reasonably satisfactory to Sublandlord that Subtenant has entered into an agreement with Treasure Island Enterprises, the sublessee of the Treasure Island Marina, for the use of the Treasure Island Marina parking lot located adjacent to the Premises.

**6.3. Easements.** This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord under the Master Lease to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"), provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities. Sublandlord is not aware of any Additional Easements or other encumbrances which would interfere with Subtenant's use of the Premises. Provided, however, that if the exercise by Master Landlord of any of such rights shall effectively deprive Subtenant of the use of all or such a significant portion of the Premises as to render the remaining portion of the Premises untenantable or unsuitable for continued use by Subtenant as contemplated under this Sublease for more than thirty (30) days, then Subtenant may terminate this Sublease upon thirty (30) days notice, subject to the surrender provisions of Section 18.2 below. If the Master Landlord exercises any of such rights in a manner and under circumstances where this Sublease is not terminated as set forth above, then Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises deprived from Subtenant by Master Landlord bears to the area of the Premises prior to Master Landlord's exercise of its rights.

**6.4. No Interference with Navy Operations.** Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their

contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over the Subtenant's use of the Premises in the event of any conflict, provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.

**6.5. No Unlawful Uses, Nuisances or Waste.** Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall eliminate any nuisances or hazards caused by Subtenant or its Agents or Invitees on or about the Premises.

## **7. REQUIRED IMPROVEMENTS**

**7.1. Required Improvements.** Except as otherwise expressly stated herein, Subtenant shall be solely responsible for the costs of (i) any improvements or building corrections required by the Department of Building Inspection of the City and County of San Francisco to bring the Premises into compliance with all applicable Laws to use and occupy the Premises as contemplated under this Sublease, including without limitation, the cost of any improvements or corrections for seismic safety needed to bring the Premises into compliance with the requirements of the FEMA 178 Life Safety Standards and (ii) any improvements required by the Mayor's Office on Disability to address disability access deficiencies on the Premises (hereafter, the "Required Improvements"). Subtenant shall be responsible for completing the Required Improvements in accordance with the procedures for constructing Alterations contained in Section 7.2 below, as applicable. Subject to events of Force Majuere (as defined below) Subtenant's failure to complete the Required Improvements by July 1, 2001 shall constitute an Event of Default under this Sublease. Subtenant shall further be responsible for obtaining all permits and licenses required in connection with the Required Improvements. Subtenant shall not make any material change to the plans and descriptions of the Required Improvements without first obtaining Sublandlord's written approval. Prior to commencement of any Required Improvements, Subtenant shall submit a complete set of construction plans for the Required Improvements to the Master Landlord through the Sublandlord. On or before July 1, 2001, Subtenant shall submit to Sublandlord written documentation from the Department of Building Inspection of the City and County of San Francisco and the Mayor's Office on Disability certifying Subtenant's completion of the Required Improvements.

(a) For purposes of this Sublease, an event of "Force Majuere" shall mean any act, event or condition beyond the control of Subtenant or Subtenant's contractors, which act, event or condition materially affects the ability of the Subtenant to perform its obligations hereunder such as Subtenant's inability to obtain permits and licenses required for such work (notwithstanding Subtenant's best efforts to obtain such permits or licenses), strikes, lockouts, or other labor disturbances, fire, earthquake, flood, hurricane or other natural disaster, acts of God, war, or civil insurrection.

(b) In the event that this Sublease is terminated prior to the expiration of the Term or any Extension Term, other than a termination pursuant to the provisions set forth in Subsection 2.2(ii) above, Sublandlord shall pay to Subtenant a portion of the actual costs incurred by Subtenant for the Required Improvements according to the following:

- I. If Sublease terminated prior to June 30, 2002, 85% of the actual costs incurred by Subtenant for Required Improvements;
- II. If Sublease terminated prior to completion of first Extension Term, 60% of actual costs incurred by Subtenant for Required Improvements;
- III. If Sublease terminated prior to completion of second Extension Term, 40% of actual costs incurred by Subtenant for Required Improvements;
- IV. If Sublease terminated prior to completion of third Extension Term, 25% of actual costs incurred by Subtenant for Required Improvements;
- V. If Sublease terminated prior to completion of fourth Extension Term, 10% of actual costs incurred by Subtenant for Required Improvements.

**7.2. Conduct of Work.** Except as may be reasonably required to maintain or repair the Premises or any improvements thereon or respond to emergencies, Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may given or withheld in Sublandlord's sole and absolute discretion, provided however, that no consent shall be required for the Required Improvements as set forth in Section 7.1 above. All Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, or by members/associates of the Club, Subtenant under the supervision of such contractors or mechanics, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations substantially or permanently impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications approved by Sublandlord may be made without Sublandlord's prior consent, which consent shall not be unreasonably withheld. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of such construction at all reasonable times.

**7.3. Ownership of Alterations.** Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of Section 7.2 above shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove any Alterations (other than the Required Improvements) from the Premises in accordance with the provisions of Section 18 hereof if Sublandlord, at its sole option and without limiting any of the provisions of Section 7.2 above, requires as a condition to approval of any such Alterations or consented that such Alterations be removed from the Premises following the expiration or termination of this Sublease.

**7.4. Subtenant's Personal Property.** All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and may be removed by it subject to the provisions of Section 18 hereof.

## **8. REPAIRS AND MAINTENANCE**

**8.1. Subtenant Responsible for Maintenance and Repair.** Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date. Sublandlord shall not be responsible for the performance of any repairs, changes or Alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof, except for repairs necessitated by Sublandlord's acts or omissions. Subtenant shall make all repairs, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in as good a condition as will exist upon the satisfactory completion of the Required Improvements, and in a reasonably clean, safe, attractive and sanitary condition, excluding existing conditions not to be improved by the Required Improvements, ordinary wear and tear and damage caused by casualty. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall promptly, at its sole cost, repair all such damage and restore the Premises to as good a condition as will exist upon the satisfactory completion of the Required Improvements.

**8.2. Utilities.** Sublandlord shall have no responsibility for providing any utilities and services to the Premises whatsoever. Subtenant shall be responsible for furnishing, at its sole costs, any utilities or services that Subtenant may need for its use of the Premises. Subtenant shall pay all amounts due and owing for such utilities and services directly to and at the rates charged by the providers of such utilities and services.

**8.3. Landscaping.** Subtenant shall maintain the existing landscaping of the Premises, if any, in a good condition.

**8.4. No Right to Repair and Deduct.** Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the

foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or and any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

## 9. LIENS

Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within twenty (20) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord as Additional Charges by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises other than the Required Improvements.

## 10. COMPLIANCE WITH LAWS

**10.1. Compliance with Laws.** Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, including, without limitation, all Laws relating to health and safety, San Francisco Bay or shoreline use, and disabled accessibility (such as the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 *et seq.*, and Title 24 of the California Code of Regulations), to the extent applicable whether foreseen or unforeseen, ordinary as well as extraordinary, provided, however, that Subtenant shall not be required to make any Alterations other than Alterations, if any, included in the Required Improvements in order to comply with such Laws unless such Alterations shall be occasioned by the Required Improvements or any other Alterations, or Subtenant's use of the Premises, or any act or omission of Subtenant, its Agents or Invitees. Notwithstanding the foregoing, no occurrence or situation arising during the term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

### 10.2. Regulatory Approvals.

**(a) Responsible Party.** Subtenant understands and agrees that Subtenant's use of the Premises and construction of Alterations permitted hereunder (including the Required Improvements) may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. To the extent such approvals or permits are required, Subtenant shall be solely responsible for obtaining any and all such regulatory

approvals. Except in the case of the Required Improvements, Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord, which consent shall not be unreasonably withheld. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be timely and promptly paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") the Sublandlord and the Master Landlord including, but not limited to, all of their respective officers, directors, employees , agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties") against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval, except to the extent such Losses are caused by Sublandlord's negligence or willful misconduct. Sublandlord shall reasonably cooperate with Subtenant to the extent such cooperation is necessary for Subtenant to fulfill its obligations under this Section 10.2.

**(b) Authority Acting in Proprietary Capacity.** Subtenant further understands and agrees that Sublandlord is entering into this Sublease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Sublease shall limit in any way Subtenant's obligation to obtain any required approvals from city officials, departments, boards or commissions having jurisdiction over the Premises. By entering into this Sublease, Sublandlord is in no way modifying or limiting Subtenant's obligation to cause the Premises to be used and occupied in accordance with all applicable laws, as provided further above.

**10.3. Compliance with Sublandlord's Risk Management Requirements.** Subtenant shall not do anything, or permit anything to be done, in or about the Premises or any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

## **11. ENCUMBRANCES**

**11.1. Encumbrance By Subtenant.** Without the prior written consent of Sublandlord, which consent Sublandlord may withhold in Sublandlord's sole and absolute discretion, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

## **12. DAMAGE OR DESTRUCTION**

**12.1. Damage or Destruction to the Premises Covered by Required Insurance.** In the case of damage to or destruction of all or any portion of the Premises that materially adversely affects the intended use of such Premises hereunder ("Damage") that is covered by the insurance required under Section 16 below (the "Required Insurance") this Agreement shall continue and Subtenant shall use the proceeds of any such Required Insurance to, with reasonable promptness and diligence, restore, repair, replace or rebuild those portions of the Premises so Damaged (the "Damaged Premises") to as good a condition, quality and class as the Damaged Premises were in immediately before such casualty ("Repair").

**12.2. Damage or Destruction to the Premises Not Covered by required Insurance.** In the case of Damage to the Premises that is not covered by the Required Insurance, then Subtenant may either (i) terminate this Sublease by giving written notice to Sublandlord of its election to do so within thirty (30) days after the date of the occurrence of such Damage (with the effective date of termination specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice) subject to the surrender provisions of Section 18.2 below, (ii) Repair the Damage at its own cost, or (iii) close such Damage area of the Premises to Subtenant's Invitees (including its licensees) and members of the general public, provided that the closure of such Damage area of the Premises will not materially interfere with the use and operation of the remaining Premises, and provided further that in connection with such closure, Subtenant takes reasonable steps to secure such closed Damage area of the Premises to protect Subtenant's Invitees and the general public from any hazardous condition or attractive nuisance that may exist in such closed Damage area of the Premises. In the event Subtenant elects to Repair Damage to the Premises at its own cost under Section 12.2 (ii) above, the cost of such Repair may be added to the Improvement Allowance with the prior written consent of the Sublandlord.

**12.3. Rental Abatement.** In the event of Damage to the Premises, Subtenant's obligation to pay Base Rent to the Sublandlord shall be proportionately reduced by an amount equal to the result obtained by multiplying the total amount of Base Rent by a fraction, the denominator of which shall be the total amount of land and water surface square footage in the Premises and the numerator of which shall be the amount of land and water surface square footage rendered unusable by the Damage to the Premises (the "Abatement"). The Abatement shall continue until Subtenant completes the Repair, but in no event shall such Abatement continue for more than twelve (12) months after the date of such casualty.

**12.4. Waiver.** The Parties understand and agree that the foregoing provisions of this Section 12 are intended to govern fully the rights and obligations of the Parties in the event of

damage or destruction to the Premises or Alterations, and the Sublandlord and Subtenant each hereby waives and releases any right to terminate this Agreement in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

### **13. ASSIGNMENT AND SUBLetting**

**13.1. Restriction on Assignment and Subletting.** Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, its agents, employees, members, officers or members or representatives, or sublet any portion of the Premises, without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion.

### **14. DEFAULT; REMEDIES**

**14.1. Events of Default.** Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

(a) **Rent.** Any failure to pay Rent or other sums, including sums due for utilities, within ten (10) days after such sums are due, which is not cured within five (5) days after written notice thereof by Sublandlord.

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease, provided Subtenant shall have a period of thirty (30) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 30-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly commences action to cure such default within such 30-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.

(c) **Vacation or Abandonment.** Any abandonment of the Premises for more than fourteen (14) consecutive days, except in a case where such abandonment is caused by an Event of Force Majeure or by Damage or Destruction, as provided in Section 12 above; and

(d) **Bankruptcy.** Either (i) the filing by the Subtenant of a petition to have the Subtenant or any of its members adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization or arrangement under any bankruptcy or insolvency law, or a general assignment by the Subtenant or any of its members for the benefit of creditors, or (ii) the filing by or against the Subtenant or any of its members of any action seeking reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of the Subtenant or any substantial part of the Subtenant's assets, if such petition is not dismissed within sixty (60) days.

**14.2. Remedies.** Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies provided by law California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

(b) **Appointment of Receiver.** The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.

**14.3. Sublandlord's Right to Cure Subtenant's Defaults.** If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with five (5) days prior written notice (except in the event of an emergency as determined by Sublandlord where prior notice by Sublandlord is impractical), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all reasonable sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remediating or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

## 15. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION

**15.1. Release and Waiver of Claims.** Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Premises due to an earthquake or subsidence, except only to the extent such Losses are caused by the negligence or willful misconduct of the Indemnified Parties. Without limiting the generality of the foregoing:

(a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of the Indemnified Parties for any

consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties , and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause, except to the extent such Losses are caused by Sublandlord's negligence or willful misconduct.

(b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any claims for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.

(c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES , WAIVES AND DISCHARGES, the Indemnified Parties from any and all losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use, except to the extent such Losses are caused by the negligence or willful misconduct of the Indemnified Parties.

(d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance from the Indemnified Parties under federal and state relocation assistance laws.

(e) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 15.1, excepting those arising from the negligence or willful misconduct of the Indemnified Parties.

(f) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(g) Subtenant has made such investigation of the facts pertaining to these waivers and releases it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(h) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

Subtenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

(i) Nothing herein shall limit or otherwise relieve Master Landlord from Master Landlord's obligations under Master Landlord's environmental indemnity described in Section 19.3 below, the Federal Tort Claims Act, or any other applicable laws.

**15.2. Subtenant's Indemnity.** Except as otherwise provided in Section 19, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses, incurred in connection with or arising out of Subtenant's use of the Premises, including, without limitation: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Invitees, (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Invitees, occurring in, on or about the Premises (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) any construction or other work undertaken by Subtenant on or about the Premises whether before or during the Term of this Sublease; or (f) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Invitees, or of any trespassers, in, on or about the Premises or any Alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such losses are caused by the negligence or intentional wrongful acts or omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease.

## **16. INSURANCE**

**16.1. Subtenant's Insurance.** Subtenant shall procure and maintain or cause to be procured and maintained throughout the Term of this Sublease and pay the cost thereof the following insurance:

(a) **Property Insurance.** Subtenant shall procure and maintain, at its own cost, a standard fire and extended coverage property insurance policy insuring the Premises, including, without limitation, all fixtures, Alterations, furniture and equipment located thereon, in an amount not less than the full replacement value of the Premises.

(b) **Public Liability and Other Insurance.** Subtenant shall at all times, at its cost, also maintain insurance for the mutual benefit of Sublandlord and Subtenant against:

(i) Claims for personal injury under a policy of commercial general liability insurance, including without limitation, claims for bodily injury, property damage or employer's liability occurring in or upon the Premises, in an amount not less than \$2,000,000 combined single limit. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CG-00-01-11-88.

(ii) Worker's compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against Sublandlord, Subtenant, the Premises or any other Sublandlord property, in an amount not less than \$1,000,000 each accident.

(iii) Automobile and watercraft liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Subtenant uses or owns automobiles or watercraft in connection with its use of the Premises. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CA-00-01-06-92.

(iv)

**16.2. General Requirements.** All insurance provided for under this Sublease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by Sublandlord.

(a) Should any of the required insurance be provided under a claims-made form, Subtenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of one (1) year beyond the expiration or termination of this Sublease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Sublease, such claims shall be covered by such claims-made policies.

(b) All liability insurance policies shall be endorsed to provide the following:

(i) Cover Subtenant as the insured and the Sublandlord and the Master Landlord as additional insureds.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Sublease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to Sublandlord of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for Sublandlord set forth in Section 20.1 below.

**16.3. Proof of Insurance.** Subtenant shall deliver to Sublandlord certificates of insurance in form and with insurers satisfactory to Sublandlord, evidencing the coverages required hereunder, on or before the Commencement Date, and Subtenant shall provide Sublandlord with certificates thereafter at least thirty (30) days before the expiration dates of expiring policies. As to the insurance required pursuant to Section 16.1(b)(1) above, such certificate shall state, among other things, that such insurance coverage includes and shall cover Subtenant's indemnity obligations under Section 15.2 above. In the event Subtenant shall fail to procure such insurance, or deliver such certificates, Sublandlord may, at its option, procure the same for the account of Subtenant, and the cost thereof shall be paid to Sublandlord within five (5) days after delivery to Subtenant of bills therefor.

**16.4. No Limitation on Indemnities.** Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or any of Subtenant's other obligations or liabilities under this Sublease.

**16.5. Lapse of Insurance.** Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by ten (10) days advance written notice to Subtenant.

**16.6. Subtenant's Personal Property.** Subtenant shall be responsible, at its expense, for separately insuring Subtenant's Personal Property.

**16.7. Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, Sublandlord and Subtenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises required hereunder and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Subtenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Subtenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Sublandlord or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

## **17. ACCESS BY SUBLANDLORD**

### **17.1. Access to Premises by Sublandlord.**

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as reasonably determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the

Premises and remain on the Premises throughout the period of such emergency, not to exceed seven (7) days. Sublandlord shall have the right to use any and all means Sublandlord reasonably considers appropriate to gain access to any portion of the Premises in an emergency, and Sublandlord shall have the right to alter or remove any Alterations or Subtenant's Personal Property as Sublandlord reasonably determines is necessary to respond to such emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting from the negligence or willful misconduct of Sublandlord or Sublandlord's Agents.

**17.2. Access to Premises by Master Landlord.** Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

## 18. SURRENDER

**18.1. Surrender of the Premises.** Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as will exist upon the satisfactory completion of the Required Improvements, ordinary wear and tear and damage by casualty excluded, and free and clear of all liens, easements and other encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for the Required Improvements or Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 7.3 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises caused by Subtenant, including, without limitation, damage resulting from the removal of any of Subtenant's Personal Property or Alterations, and restore the Premises to their condition immediately prior to such removal. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or reparation work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises.

**18.2 Attractive Nuisances.** In addition to the foregoing, if Subtenant terminates this Sublease under Sections 6.3, 8.1 or 12.2 above, Subtenant shall, prior to such termination secure the Premises to reasonably protect or warn any third parties of any dangerous conditions that may exist on the Premises and to protect Sublandlord from attractive nuisance liability.

## 19. HAZARDOUS MATERIALS

**19.1. No Hazardous Materials.** Subtenant covenants and agrees that, except for normal amounts of hazardous substances and petroleum products commercially used in marina operations, neither Subtenant nor any of Subtenant's Agents or Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials other than materials that are part of the structure of any existing improvements on the Premises which is not disturbed by any activity of Subtenant or its Agents or Licensees, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Without limiting the foregoing, Subtenant acknowledges and agrees that it shall be bound by and will comply with the environmental protection provisions provided for in Section 13 of the Master Lease.

**19.2. Subtenant's Environmental Indemnity.** If Subtenant breaches any of its obligations contained in Section 19.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leaching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 15.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with

any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials caused by Subtenant or its Agents or Invitees, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and reasonable attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release caused by Subtenant or its Agents or Invitees. The foregoing indemnity shall not include Losses arising as a result of pre-existing Hazardous Materials on, at, in or about the Premises unless and to the extent Subtenant or its Agents or Invitees causes the Release of or exacerbates the condition of such pre-existing Hazardous Materials. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any non-pre-existing Hazardous Materials in, on, under or about the Premises or the Property, Subtenant shall, immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises, and shall, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

**19.3. Master Landlord's Environmental Indemnity.** The Parties hereby acknowledge and agree that, pursuant to Section 330 of Public Law 102-484, as amended, Master Landlord is required to hold harmless, defend and indemnify the Sublandlord and Subtenant from and against any suit, claim, demand, action, liability, judgment, cost or fee, arising out of any claim for personal injury or property damage (including death, illness, loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant, contaminant, petroleum product, or petroleum derivative from or on the Premises as a result of Department of Defense activities at the Property. Accordingly, except as specifically provided in Section 19.2 above, Subtenant is not responsible for any remediation activities with respect to the presence of Hazardous Materials on the Premises prior to the Commencement Date.

**19.4. Acknowledgment of Receipt of EBS and FOSL Reports.** Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease.

## 20. GENERAL PROVISIONS

**20.1. Notices.** Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid as follows:

Notice Address of Sublandlord:      Treasure Island Development Authority  
Treasure Island Project Office  
401 Palm Avenue  
Building 1, Room 217  
Treasure Island  
Attn: Executive director  
Tel. No.: (415) 274-0600  
Fax No.: (415) 274-0299

with a copy to:      Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Michael S. Cohen  
Tel No.: 415-554-4722  
Fax No.: 415 554-4755

Notice Address of Subtenant:      Treasure Island Yacht Club  
312 Juanita Avenue  
Millbrae, CA 94080  
Attn:  
Tel. No.: (650) 588-4351  
Fax No.:

With a copy to :      R. Kent Brewer, Vice Commodore  
142 El Toyonal  
Orinda, CA 94563  
Attn:  
Tel. No.: (925) 254-6244  
Fax No.: (925) 254-0378

Notice Address of Master Landlord:      Commanding Officer (Code 24)  
Engineering Field Activity West  
Naval Facilities Engineering Command  
900 Commodore Drive  
San Bruno, California 94066

Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be

deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 20.1 and applicable Laws, shall be deemed receipt of such notice.

**20.2. Security Deposit.** Subtenant shall pay to Sublandlord upon execution of this Sublease a security deposit in the amount of Nine Hundred Dollars (\$900.00) as security for the faithful performance of all terms, covenants and conditions of this Sublease. Subtenant agrees that Sublandlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Subtenant, Subtenant's Agents or Subtenant's Invitees, or any failure of Subtenant to perform any other terms, covenants or conditions contained in this Sublease, without waiving any of Sublandlord's other rights and remedies hereunder or at Law or in equity. Should Sublandlord use any portion of the security deposit to cure any Event of Default by Subtenant hereunder, Subtenant shall immediately replenish the security deposit to the original amount, and Subtenant's failure to do so within five (5) days of Sublandlord's notice shall constitute a material Event of Default under this Sublease. Sublandlord's obligations with respect to the security deposit are solely that of debtor and not trustee. Sublandlord shall not be required to keep the security deposit separate from its general funds, and Subtenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Subtenant's liability for the performance of any of its obligations under this Sublease. To the extent that Sublandlord is not entitled to retain or apply the security deposit pursuant to this Section 20.2, Sublandlord shall return such security deposit to Sublandlord within forty-five (45) days of the termination of this Sublease.

**20.3. No Implied Waiver.** No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Rent during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent or Subagent of Sublandlord, shall be deemed a waiver of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease. The provisions of the Section 20.3 shall be mutual to the extent applicable.

**20.4. Amendments.** Neither this Sublease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

**20.5. Authority.** The person signing below for Sublandlord represents and warrants that Sublandlord is a non-profit, public benefit corporation, and an instrumentality of the State of California and the City and County of San Francisco, and that he or she has the right and authority to execute this Sublease. If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosure set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

**20.6. Joint and Several Obligations.** The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.

**20.7. Interpretation of Sublease.** The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City of San Francisco holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

**20.8. Successors and Assigns.** Subject to the provisions of Section 13 above, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their representatives and successors and assigns.

**20.9. Brokers.** Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified

party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

**20.10. Severability.** If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

**20.11. Governing Law.** This Sublease shall be construed and enforced in accordance with the Laws of the State of California.

**20.12. Entire Agreement.** This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties regarding the interim subleasing of the Premises and supersedes all prior written or oral negotiations, discussions, understandings and agreements with respect thereto. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein.

**20.13. Attorneys' Fees.** In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees.

**20.14. Time of the essence.** Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.

**20.15. Cumulative Remedies.** All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

**20.16. Survival of Indemnities.** Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof.

**20.17. Relationship of Parties.** Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

**20.18. Non-Liability of Indemnified Parties' officials, employees and Agents.** No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant or its successors and assigns in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant or its successors and assigns, or for any obligation of Sublandlord under this Agreement.

**20.19. Counterparts.** This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**20.20. Master Landlord's Consent.** This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord

**20.21. Consent by Sublandlord.** Where consent of Sublandlord is required hereunder, Subtenant may rely on any written consent granted by Sublandlord's Executive Director or her designee.

## 21. SPECIAL PROVISIONS

**21.1. Signs.** Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises, without Sublandlord's prior written consent, which Sublandlord shall not unreasonably withhold or delay.

**21.2. Prevailing Wages.** With respect to the construction of the Required Improvements or any Alterations, any employee performing services for Subtenant shall be paid not less than the highest prevailing rate of wages as required by Section A7.204 of the City and County of San Francisco Charter and Sections 6.33 through 6.45 of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California.

**21.3. Public Transit Information.** Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Building and encouraging use of such facilities, all at Subtenant's sole expense.

## **21.4. Non-Discrimination in City Contracts and Benefits Ordinance.**

(a) Covenant Not to Discriminate. In the performance of this Sublease,

Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Subtenant, in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) Sub-Subleases and Other Subcontracts. Subtenant shall include in all sub-

subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such sub-subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all sub-subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all sub-subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) Non-Discrimination in Benefits. Subtenant does not as of the date of this

Sublease and will not during the Term, in any of its operations in San Francisco or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Incorporation of Administrative Code Provisions by Reference. The

provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the Sublease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

**21.5. No Relocation Assistance; Waiver of Claims.** Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated or expires by its own terms, and Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 *et seq.*), except as otherwise specifically provided in this Sublease with respect to a Taking.

**21.6. MacBride Principles - Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**21.7. Tropical Hardwood Ban.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product. Do we need to add anything regarding virgin redwood? What about hiring requirements/preferences for TIDHI?

**21.8. Conflicts of Interest.** Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.

**21.9. Burma (Myanmar) Business Prohibition.** Subtenant is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(G) of the San Francisco Administrative Code. The Sublandlord reserves the right to terminate this Sublease for default if Tenant violates the terms of this clause.

Chapter 12J of the San Francisco Administrative Code is hereby incorporated by reference as though fully set forth herein. The failure of Subtenant to comply with any of its requirements shall be deemed a material breach of this Sublease. In the event Subtenant fails to comply in good faith with any of the provisions of Chapter 12J of the San Francisco Administrative Code, Subtenant shall be liable for liquidated damages for each violation in an amount equal to Subtenant's net profit under this Sublease, or 10% of the total amount of the Sublease, or \$1,000, whichever is greatest. Subtenant acknowledges and agrees the liquidated damages assessed shall be payable to the Sublandlord upon demand and may be setoff against any moneys due to the Subtenant from this Sublease.

**21.10. Charter Provisions.** This Sublease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

**21.11. Prohibition of Tobacco Advertising.** Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the Sublandlord, including the Premises and the Property. This prohibition includes the placement of the name of a company producing selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

Sublandlord and Subtenant have executed this Sublease in duplicate as of the date first written above.

**SUBTENANT:**

**TREASURE ISLAND YACHT CLUB,**  
a California nonprofit mutual benefit corporation

By

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**SUBLANDLORD:**

**THE TREASURE ISLAND DEVELOPMENT  
AUTHORITY**

By: \_\_\_\_\_

Its: Executive Director

Approved as to Form:

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**Deputy City Attorney**

Approved:

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**Base Conversion Manager**  
U.S. Navy  
Engineering Field Activities West



**AGENDA ITEM**  
**Treasure Island Development Authority**  
*City and County of San Francisco*

**Subject:** Resolution authorizing the extension of a  
Use Permit for an additional six months with California  
Engineering Contractors/Modern Continental for use of Pier 1.

**Agenda No: 9**

**Contact Person/Phone:** Marianne Conarroe  
(415) 274-0660

**Meeting Date:** 05/09/2001

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**SUMMARY OF PROPOSED ACTION:**

Staff seeks the authorization for an extension of a six-month Use Permit with California Engineering Contractors/Modern Continental for use of Pier 1.

**BACKGROUND:**

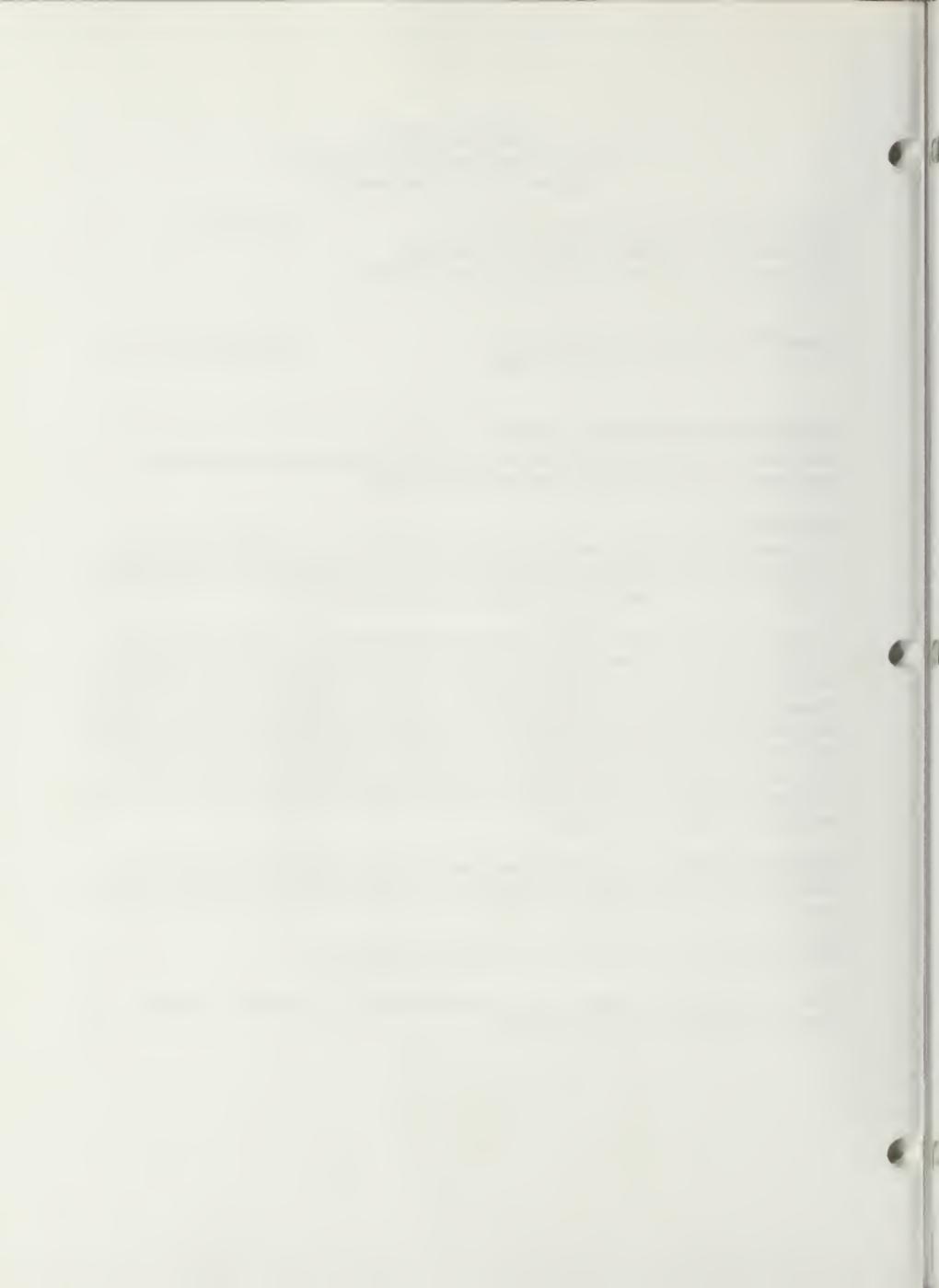
In September 2000, Authority staff issued a six-month Use Permit to California Engineering Contractors/Modern Continental to use a portion of Pier 1 for transporting workers to and from the western span of the San Francisco/Oakland Bay Bridge. (Exhibit A).

As part of the retrofit project on the western span of the Bay Bridge, California Engineering Contractors/Modern Continental (CEC) expressed the need to use Pier 1 in order to transport a work crew (approx. 20 people) in a timely fashion. Past practice had been driving the crew from Treasure Island, across the Bay Bridge to Pier 50 on the City's southern waterfront. Using a tug boat, the crew was then transported to the lower western span of the bridge for work being done close to the water on the anchors and pilings of the bridge. CEC offices and construction lay-down space is currently located on Treasure Island. By initiating water transport from Pier 1 on Treasure Island southeastern shore rather than Pier 50, CEC saves a significant amount of time in reaching its construction destination.

California Engineering Contractors/Modern Continental pays the Authority \$6,000.00 for the six-month term of the Use Permit, whether they use the portion of Pier 1 on a daily or occasional basis.

All parking of the crew vehicles are off of the Pier in an adjacent lot.

Since the areas CEC uses does not impact any other activity on Pier 1, staff recommends that the Authority authorize the six month extension.



1 [California Engineering Contractors/Modern Continental Use Permit]

2 AUTHORIZING THE EXTENSION OF A SIX MONTH USE PERMIT WITH  
3 CALIFORNIA ENGINEERING CONTRACTORS/MODERN CONTINENTAL.

4 WHEREAS, On May 2, 1997, the Board of Supervisors (the "Board") passed  
5 Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to  
6 establish a nonprofit public benefit corporation known as the Treasure Island  
7 Development Authority (the "Authority") to act as a single entity focused on the  
8 planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of  
9 former Naval Station Treasure Island (the "Base") for the public interest, convenience,  
10 welfare and common benefit of the inhabitants of the City and County of San  
11 Francisco; and,

12 WHEREAS, Under the Treasure Island Conversion Act of 1997, (the "Act"), the  
13 California legislature (i) designated the Authority as a redevelopment agency under  
14 California redevelopment law with authority over the Base upon approval of the City's  
15 Board of Supervisors, and, (ii) with respect to those portions of the Base which are  
16 subject to the Tidelands Trust, vested in the Authority the authority to administer the  
17 public trust for commerce, navigation and fisheries as to such property; and,

18 WHEREAS, the Authority and Permittee entered into a six-month Use Permit  
19 dated September 20, 2000 (the "Permit") pursuant to which the Authority conferred to  
20 Permittee, a personal, non-exclusive and non-possessory privilege to enter upon and  
21 use an area (the "Licensed Area") consisting of approximately 500 square feet of  
22 space along the edge of Pier 1, and approximately 500 square feet of space adjacent  
23 to the Pier for the sole purpose of parking vehicles off of the Pier; and



1 WHEREAS, The Authority has received an expressed interest from California  
2 Engineering Contractors/Modern Continental ("the Premittee") to extend the Use  
3 Permit to use the southern inside portion of Pier 1 on Treasure Island for the purpose  
4 as a landing site for water transport of bridge crew to its construction destination on  
5 the anchors and pilings, and for possible loading and unloading of equipment related  
6 to the retrofit construction of the western span of the San Francisco Bay Bridge; and,

7 WHEREAS, the Authority is willing to extend the term of the Permit to not  
8 exceed six months with out prior approval of the Board of Directors; now therefore,  
9  
10 be it

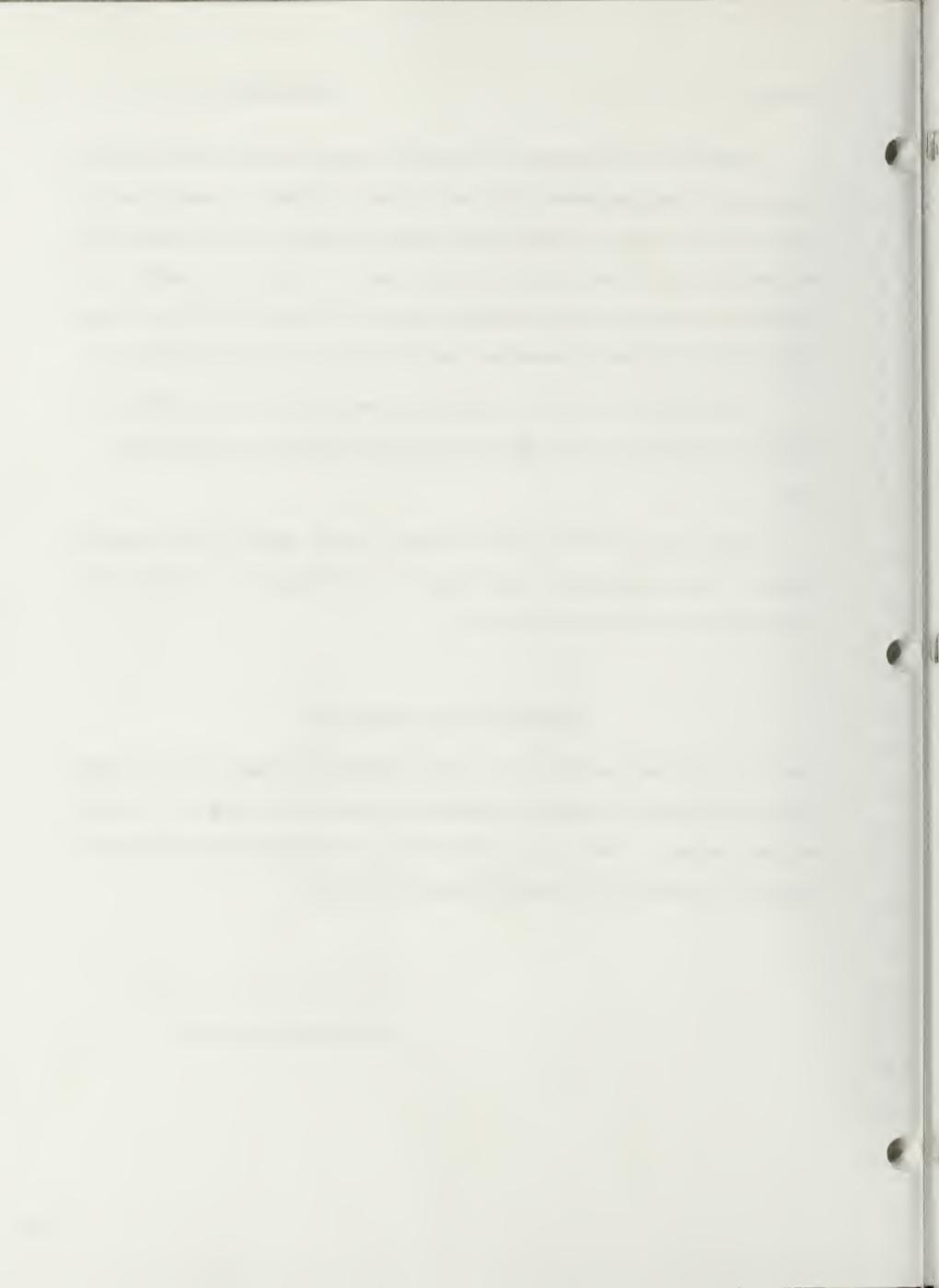
11 RESOLVED, That the Board of Directors hereby authorizes the Executive  
12 Director to extend the term of the Permit for an additional six months in the  
13 substantially the form attached as Exhibit A.  
14

15 **CERTIFICATE OF SECRETARY**

16 I hereby certify that I am the duly elected and acting Secretary of the Treasure  
17 Island Development Authority, a California nonprofit public benefit corporation,  
18 and that the above Resolution was duly adopted and approved by the Board of  
19 Directors at a properly noticed meeting on May 9, 2001.  
20  
21  
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John Elberling, Secretary



## USE PERMIT

**THIS USE PERMIT** (this "Permit") dated for reference purposes only as of April 26, 2001, is made by and between the TREASURE ISLAND DEVELOPMENT AUTHORITY ("Authority") and CALIFORNIA ENGINEERING CONTRACTORS, INC. (Permittee").

### RECITALS

WHEREAS, pursuant to that certain Lease for the South Waterfront Area, Naval Station Treasure Island, dated September 4, 1998, as amended (the "Master Lease"), by and between the Authority and the Department of Navy (the "Navy"), a copy of which is attached hereto as Exhibit A, the Authority has the right to use those portions of Pier 1, located on Naval Station Treasure Island hereto (the "Premises"); and

WHEREAS, Permittee seeks to use portions of Pier 1 of the Premises for the purposes stated herein, subject to the terms and conditions of this Permit.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Authority and Permittee agree as follows:

1. **License.** Authority confers to Permittee a, personal, non-exclusive and non-possessory privilege to enter upon and use Pier 1 as depicted in Exhibit B, attached (hereafter referred to as, the "License Area"), for the limited purpose and subject to the terms, conditions and restrictions set forth below. The privilege given to Permittee under this Permit is effective only insofar as the rights of Authority in the License Area are concerned, and Permittee shall obtain any further permission necessary because of any other existing rights affecting the License Area, or any portion thereof.

In recognition of the non-exclusive nature of this Permit, Permittee acknowledges and agrees that if Authority needs access to the License Area for a specific purpose or otherwise, Permittee shall temporarily relocate at no cost to the Authority any vessel berthed at, in, or around the License Area to accommodate such use by the Authority upon 24 hours advance notice. Permittee further agrees that in the event of any emergency, Authority and its agents and employees shall be authorized to move any vessel berthed at the License Area, without liability to Authority or its agents or employees for damages or loss of any kind, except for any damage or loss occurring as a result of the willful misconduct of Authority or its agents or employees.

2. **Inspection of License Area.** Permittee represents and warrants that Permittee has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them, ("Permittee's Agents") of the License Area and the suitability of the License Area for Permittee's intended use. Permittee is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the License Area is suitable for its operations and intended uses.

3. **As Is; Disclaimer of Representations.** Permittee acknowledges and agrees that the License Area is being licensed and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises (including the License Area), or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties ("Laws") governing the use, occupancy, management, operation and possession of the Premises (including the License Area). Without limiting the foregoing, this Permit is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises (including the License Area), or any portion thereof, whether or not of record. Permittee acknowledges and agrees that neither Authority nor any of its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns ("Authority's Agents") have made, and Authority hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises (including the License Area), (ii) the physical, geological, seismological or environmental condition of the Premises (including the License Area), (iii) the existence of, quality, nature or adequacy of any utilities or maritime services serving the Premises (including the License Area), (iv) the feasibility, cost or legality of constructing any Alterations on the Premises (including the License Area) if required for Permittee's use and permitted under this Permit, (v) the safety of the Premises (including the License Area and any floats, walkways, docks, slips or equipment in the License Area), whether for the use of Permittee or any other person, including Permittee's Agents or Permittee's clients, customers, vendors, invitees, guests, members, licensees, assignees or Permittees ("Permittee's Invitees"), or (vi) any other matter whatsoever relating to the Premises (including the License Area) or their use, including, without limitation, any implied warranties of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE.

4. **Seismic Report.** Without limiting Section 3 above, Permittee expressly acknowledges for itself and Permittee's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions,*" prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco, (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Permittee has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils on Treasure Island and points out that in the area of the Premises where the License Area is located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises (including the License Area) to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that buildings and any other structures or improvements located on or about the Premises (including the License Area) may fail structurally and collapse.

**5. Use of License Area.** Permittee may enter and use Pier 1 for the sole purpose of accessing a water taxi ferry landing for employees of Permittee. Upon providing the Authority 24 hour prior written notice, Permittee may use the Licensed area for the purpose of loading and unloading equipment. Additional provisions for Permitted Uses is further defined in Exhibit D, Permitted Uses. No sale or consumption of alcoholic beverages shall be permitted.

(a) **Maintenance and Repairs.** Permittee shall at all times during the term of this Permit and at its sole cost and expense, maintain and repair in good and working order, condition and repair the License Area. Authority shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the License Area nor to any improvements or alterations now or hereafter located thereon. In the event the Permittee, its Agents or Invitees cause any damage (excepting ordinary wear and tear) to the License Area, Authority may repair the same at Permittee's expense and Permittee shall immediately reimburse Authority therefor.

(b) **Liens.** Permittee shall keep the License Area free from any liens arising out of any work performed, materials furnished or obligations incurred by Permittee or its Agents. In the event that Permittee shall not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record, Authority shall have, in addition to all other remedies provided by this Permit or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Authority for such purpose and all reasonable expenses incurred by Authority in connection therewith shall be payable to Authority by Permittee within thirty (30) days following written demand by Authority.

**6. Restrictions on Use.** Permittee agrees that, by way of example only and without limitation, the following uses of the License Area by Permittee, or any other person claiming by or through Permittee, are inconsistent with the limited purpose of this Permit and are strictly prohibited as provided below:

(a) **Hazardous Material** Permittee shall not cause, nor shall Permittee allow any of its Agents or Invitees (as such terms are defined below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the License Area, or transported to or from the License Area without the prior written consent of Authority. Permittee shall immediately notify Authority when Permittee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the License Area. Permittee shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Permittee or its Agents or Invitees cause a release of Hazardous Material, Permittee shall, without cost to Authority and in accordance with all laws and regulations, return the License Area to the condition immediately prior to the release. In connection therewith, Permittee shall afford Authority a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes,

without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*, or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the License Area or are naturally occurring substances in the License Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "**release**" or "**threatened release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the License Area.

(b) **Nuisances.** Permittee shall not conduct any activities on or about the License Area that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to Authority, to the owners or occupants of neighboring property or to the public.

(c) **Damage.** Permittee shall not do anything about the License Area that could cause damage to the License Area or any Authority property. Authority hereby acknowledges that construction of the Permitted Improvements (as defined below) shall not constitute "damage" to the License Area under this Section 6(c).

(d) **Parking.** Parking of any vehicles on Pier 1 is prohibited except for the sole purpose of loading and unloading of passengers and equipment. Parking of vehicles shall not exceed more than 25 (Twenty Five) vehicles and is available off of the Pier next to the entrance gate. To the extent practicable, Permittee shall use its best efforts to encourage ride-sharing, the use of shuttle busses or other pooled-means of transportation to and from the License Area.

(e) **Utilities and Services.**

(i) **Utilities.** Permittee shall pay all charges for the use of said electricity and water and sewer hook ups and services.

(ii) **Services.** Permittee shall make arrangements and shall pay all charges for all services to be furnished on, in or to the License Area or to be used by Permittee, including without limitation, garbage and trash collection, janitorial service and extermination service (if any).

7. **Alterations and Improvements.** Except as otherwise expressly provided herein, Permittee shall not construct or place any temporary or permanent structures or improvements in, on, under or about the License Area, nor shall Permittee make any alterations or additions to any of existing structures or improvements on the License Area, unless Permittee first obtains Authority's prior written consent, which Authority may give or withhold in its sole and absolute discretion.

(a) All alterations and improvements shall be constructed in a good and workmanlike manner and in compliance with all applicable building, zoning and other applicable laws, and in compliance with the terms of and the conditions imposed

by any authorization, approval or permit by any governmental agency having jurisdiction over the License Area, including but not limited to the Bay Conservation and Development Commission ("BCDC").

- (b) All alterations and improvements shall be performed with reasonable dispatch, delays beyond the reasonable control of Permittee excepted.
- (c) All alterations or improvements to the License Area made by or on behalf of Permittee which may not be removed without substantial injury to the License Area shall become part of the realty, shall be owned by the Authority and shall, on the termination of this Permit, remain on the License Area without compensation to Permittee, unless the Authority first waives its right to the alterations or improvements in writing. All other alterations or improvements to the License Area shall be the property of Permittee.
- (d) Except as otherwise stated above, Permittee shall be obligated at its own expense to remove and relocate or demolish and remove (as Permittee may choose) any or all alterations or improvements which Permittee has made to the License Area, including without limitation all telephone wiring and equipment installed by Permittee. Permittee shall repair, at its own expense, in good workmanlike fashion any damage occasioned thereby.
- (e) If Permittee constructs any alterations or improvements to the License Area without Authority's prior written consent or without complying with subsections 7(a) and 7(b) above, then, in addition to any other remedy available to the Authority, Authority may require Permittee to remove, at Permittee's expense, any or all such alterations or improvements and to repair, at Permittee's expense and in good workmanlike fashion, any damage occasioned thereby. Permittee shall pay to Authority all special inspection fees as set forth in the San Francisco Building Code for inspection of work performed without required permits.

8. **Term of Permit.** The privilege conferred to Permittee pursuant to this Permit shall begin at 6:00 a.m. on Monday, March 12, 2001 to access Pier 1 and shall automatically expire at 6:00 p.m. on, Monday, September 10, 2001 unless extended by resolution adopted by the Board of Directors of the Authority. Moreover, if the South Waterfront Lease terminates for any reason whatsoever, this Permit shall automatically terminate.

9. **Compliance with Laws.** Permittee shall, at its expense, conduct and cause to be conducted all activities on the License Area allowed hereunder in a safe and reasonable manner and in compliance with all laws, regulations, ordinances and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act) whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the License Area any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Permittee understands and agrees that Authority is entering into this Permit in its capacity as a property owner with a proprietary interest in the License Area and not as a regulatory agency with police powers. Permittee further understands and agrees that no approval by Authority for purposes of this Permit shall be deemed to constitute approval of any

federal, state, City or other local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such regulatory approvals at Permittee's sole cost or limit in any way Authority's exercise of its police powers. Without limiting the foregoing, before beginning any work in the License Area, Permittee shall obtain any and all permits, licenses and approvals (collectively, "approvals") of all regulatory agencies and other third parties that are required to commence and complete the Permitted Improvements.

10. **Surrender**. Upon the expiration of this Permit, Permittee shall surrender the License Area in the same condition as received, free from hazards and clear of all debris, except as otherwise provided herein. At such time, Permittee shall remove all of its property from the License Area, and shall repair, at its cost, any damage to the License Area caused by such removal. Permittee's obligations under this Section shall survive any termination of this Permit.

11. **Security**. Should the Permittee determine that security is needed, Permittee shall arrange for the provision of additional security for the License Area, on terms and conditions reasonably satisfactory to Authority.

12. **Release and Waiver of Claims; Indemnification**

12.1 **Release and Waiver of Claims**. Permittee, on behalf of itself and Permittee's Agents, covenants and agrees that the Authority shall not be responsible for or liable to Permittee for, and, to the fullest extent allowed by any Laws, Permittee hereby waives all rights against the Authority and releases them from, any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses"), including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the License Area, during the term hereof, from any cause whatsoever, including without limitation, partial or complete collapse of the buildings or other improvements thereon due to an earthquake or subsidence, except only to the extent such Losses are caused exclusively by the negligence or willful misconduct of the Authority (except as provided in Section 12.1(a) below). Without limiting the generality of the foregoing:

(a) Without limiting any other waiver contained herein, Permittee on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Authority from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the Authority's decision to allow Permittee to use the License Area, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Authority.

(b) Permittee covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Authority any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 12.1.

(c) In executing these waivers and releases, Permittee has not relied upon any representation or statement other than as expressly set forth herein.

(d) Permittee has made such investigation of the facts pertaining to these waivers and releases as it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Permittee regardless of any claims of mistake.

(e) In connection with the foregoing releases, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

**12.2** Permittee acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Permit in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Permit.

**12.3 Permittee's Indemnity.** Permittee, on behalf of itself and Permittee's Agents, shall indemnify, protect, defend and hold harmless forever ("Indemnify") the Authority from and against any and all Losses, expressly including but not limited to, any Losses arising out of a partial or complete collapse of any building located on the License Area due to an earthquake or subsidence, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Permittee or Permittee's Agents or Permittee's Invitees; (b) any accident, injury to or death of a person, including, without limitation, Permittee's Agents and Permittee's Invitees, howsoever or by whomsoever caused during their stay in, on or about the License Area during the term hereof; (c) any default by Permittee in the observation or performance of any of the terms, covenants or conditions of this Permit to be observed or performed on Permittee's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Permittee, Permittee's Agents or Permittee's Invitees or any person or entity claiming through or under any of them, of the License Area or any Alterations; (e) the condition of the License Area, (f) any construction or other work undertaken by Permittee on or about the License Area whether before or during the Term of this Permit; or (g) any acts, omissions or negligence of Permittee, Permittee's Agents or Permittee's Invitees, or of any trespassers, in, on or about the License Area during the term hereof or any alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Permit and further except only to the extent such Losses are caused by the negligence or intentional wrongful acts and omissions of the Authority. Notwithstanding the foregoing, Permittee's obligations to indemnify the Authority under this Section 12.3 shall remain in full force and effect regardless of whether or not the Authority's decision to permit the License Area to the Permittee, given the seismic condition of the property, is or may be determined to be an act of gross negligence or willful misconduct of the Authority. The foregoing Indemnity shall

include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Authority's costs of investigating any Loss. Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Permittee by Authority and continues at all times thereafter. Permittee's obligations under this Section shall survive the expiration or sooner termination of this Permit. Notwithstanding anything contained herein, to the extent such Losses are not covered by insurance required herein and subject to this Section 12.3, Permittee shall have no obligation to repair, restore or reconstruct the License Area (or to pay for the same) in the event the License Area is damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty.

## 13. INSURANCE

**13.1 Permittee's Insurance.** Permittee shall procure and maintain throughout the Term of this Permit and pay the cost thereof the following insurance:

(a) Permittee shall at all times, at its cost, also maintain insurance for the mutual benefit of Authority and Permittee against:

(i) Claims for personal injury under a policy of commercial general liability insurance with limits not less than \$10,000,000 each occurrence Combined Single Limit for Bodily Injury and property Damage, including coverages for Contractual Liability, personal Injury, Liquor Liability, Products and Completed Operations , covering, including without limitation, claims for bodily injury , property damage or employer's liability occurring in or upon the License Area arising from earthquakes or subsidence. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CG-00-01-11-88.

(ii) Worker's compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against Authority, Permittee, the License Area or any other Authority property, in an amount not less than \$1,000,000 each accident.

(iii) Automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Permittee uses automobiles in connection with its use of the License Area. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CA-00-01-06-92.

(iv) Protection and Indemnity insurance, with limits not less than \$1,000,000 each occurrence, including coverage for injury or damage to other parties or their property, arising from the operation of any Vessels under this Permit, and including coverage for illness, injury or death of the master or members of the crew, with any deductible not to exceed \$10,000 each occurrence.

(v) Water Pollution Liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence and any deductible not to exceed \$5,000 each occurrence.

(vi) Coverage for Jones Act benefits and U.S. Longshore and Harbor Workers' Act benefits, each in form and amount acceptable to Authority.

**13.2 General Requirements.** All insurance provided for under this Permit shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by Authority.

(a) Should any of the required insurance be provided under a claims-made form, Permittee shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of one (1) year beyond the expiration or termination of this Permit, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Permit, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

(i) Cover Permittee as the insured and the Authority as an additional insured.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

**13.3 Proof of Insurance.** Permittee shall deliver to Authority certificates of insurance in form and with insurers satisfactory to Authority, evidencing the coverage required hereunder, on or before the commencement date of this Permit, together with complete copies of the policies promptly upon Authority's request. As to the insurance required pursuant to Section 13.1(a)(1) above, such certificate shall state, among other things, that such insurance coverage includes and shall cover Permittee's indemnity obligations under Section 12.3 above. In the event Permittee shall fail to procure such insurance, or to deliver such policies or certificates, Authority may, at its option, procure the same for the account of Permittee, and the cost thereof shall be paid to Authority within five (5) days after delivery to Permittee of bills therefor.

**13.4 No Limitation on Indemnities.** Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations herein or any of Permittee's other obligations or liabilities under this Permit.

**13.5 Lapse of Insurance.** Authority may elect in Authority's sole and absolute discretion to terminate this Permit upon the lapse of any required insurance coverage by written notice to Permittee.

**13.6 Permittee's Personal Property.** Permittee shall be responsible, at its expense, for separately insuring Permittee's Personal Property.

**13.7 Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, Authority and Permittee each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the License Area and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the License Area, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the License Area carried by Permittee does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Permittee shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Authority or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

**14. No Assignment.** This Permit is personal to Permittee and shall not be assigned, conveyed or otherwise transferred by Permittee under any circumstances. Any attempt to assign this Permit shall be void.

**15. Parties and their Agents and Invitees: Approvals.** As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers and contractors of such party. The term "Invitees" when used with respect to either party shall mean any person entering the Premises or the License Area with Permittee's express or implied permission. All approvals, consents or other determinations permitted or required by Authority hereunder shall be made by or through the Authority's Executive Director or her authorized designee.

**16. MacBride Principles - Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Permittee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**17. Non-Discrimination** Permittee shall not, in the operation and use of the License Area, discriminate against any person or group of persons solely because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, gender identity, disability or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC). The provisions of Chapters 12B

and 12C of the San Francisco Administrative Code, relating to nondiscrimination by parties contracting with the City and County of San Francisco, are incorporated herein by reference and made a part hereof as though fully set forth herein. Permittee agrees to comply with all of the provisions of such Chapters 12B and 12C that apply to parties contracting with the City and County of San Francisco.

18. **Tropical Hardwoods and Virgin Redwood**. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood wood product.

19. **No Tobacco Advertising**. Permittee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the Authority, including the property which is the subject of this Permit. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

20. **Maritime Liens**. By execution of this Permit, Permittee acknowledges and agrees that pursuant to Harbors and Navigation Code Sections 491, 501, the Federal Maritime Lien Act (46 U.S.C. Sections 971-975) and by the terms of this Permit, Authority shall have a lien on any and all vessels berthed at the License Area for money which may become due under this Permit. As provided in the foregoing statutes, Authority shall have the right to take possession and control of any such vessel and remove and store the vessel for the purpose of perfecting and executing upon Authority's lien rights in the vessel.

**General Provisions.** (a) This Permit may be amended or modified only by a writing signed by Authority and Permittee. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (d) The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. (e) Time is of the essence. (f) This Permit shall be governed by California law and City's Charter. (g) If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of Authority shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience. (h) If Permittee consists of more than one person then the obligations of each person shall be joint and several. (i) Permittee may not record this Permit or any memorandum hereof. (j) Subject to the prohibition against assignments or other transfers by Permittee hereunder, this Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (k) Any sale or conveyance of the property burdened by this Permit by Authority shall automatically revoke this Permit.

**22. Permit Fees; Liquidated Damages for Failure to Surrender as Required.** Immediately upon entering into this permit, Permittee shall pay to TIDA a one-time flat rate of \$6,000.00 (Six Thousand Dollars) for its access and use of Pier 1 as provided above. Payable upon execution of this Use Permit. If the term of this permit is extended by resolution of the Board of Directors of the Authority, Permittee shall pay the Authority an additional one-time flat rate equal to the number of months extended by the resolution times \$1,000.00/month. Such additional fee shall be paid upon the adoption of the resolution.

**PERMITTEE:**  
**CALIFORNIA ENGINEERING CONTRACTORS,  
INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**AUTHORITY:**  
**TREASURE ISLAND DEVELOPMENT AUTHORITY**

\_\_\_\_\_  
Executive Director

**APPROVED AS TO FORM:**

LOUISE H. RENNE  
City Attorney

By \_\_\_\_\_  
Deputy City Attorney

**EXHIBIT A**

**SOUTH WATERFRONT LEASE**

All correspondence in connection with  
this contract should include reference to:

N6247498RPOOP99

LEASE

BETWEEN

THE UNITED STATES OF AMERICA

AND

TREASURE ISLAND DEVELOPMENT AUTHORITY

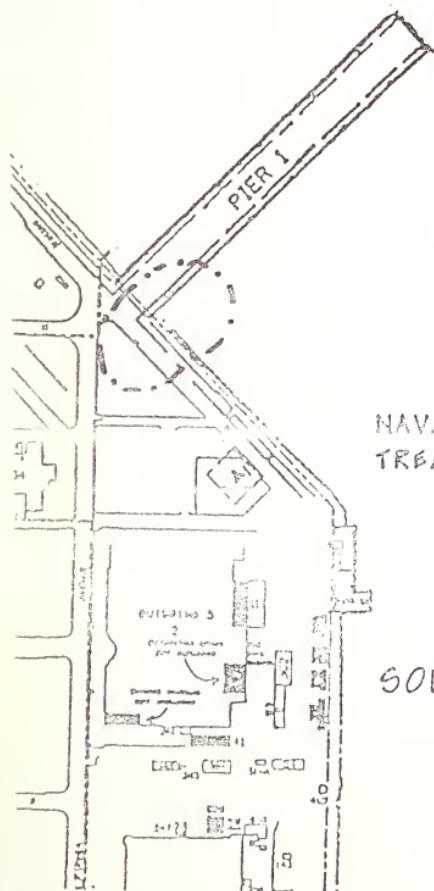
FOR

THE SOUTH WATERFRONT AREA

NAVAL STATION TREASURE ISLAND

EXHIBIT B

DESCRIPTION OF LICENSED AREA



NAVAL STATION  
TREASURE ISLAND

SOUTH WATERFRONT  
LEASE

26 AUGUST 1996  
EXHIBIT A

**EXHIBIT C**  
**COVER PAGE OF SEISMIC REPORT**

TREASURE ISLAND REUSE PLAN

# EXISTING CONDITIONS REPORT: VOL. 2

## PHYSICAL CHARACTERISTICS, BUILDING AND INFRASTRUCTURE CONDITIONS

AUGUST 1995

### PREPARED FOR:

The Office Of Military Base Conversion,  
Planning Department, City & County of San Francisco,  
and the San Francisco Redevelopment Agency

### PREPARED BY:

ROMA Design Group  
Cerbato & Associates Consulting Electrical Engineers  
Cervantes Design Associates  
Don Todd Associates, Inc.  
Manna Consultants, Inc.  
Moffatt & Nichol Engineers  
Olivia Chen Consultants, Inc.  
Takahashi Consulting Engineers  
Treadwell & Rollo, Inc.

**EXHIBIT D**  
**DESCRIPTION OF PERMITTED USES**

The permittee may enter and use Pier 1 for the purpose of loading and unloading approximately 25 passengers onto a Westar Water Taxi. As well as for the purpose of loading and unloading equipment as specified in prior written notice provided by Permittee.

Parking of any vehicles on Pier 1 is prohibited except for the sole purpose of loading and unloading of equipment. Parking of vehicles shall not exceed more than 25 (Twenty Five) vehicles and is available off of the Pier next to the entrance gate.

All activities will take place beginning at 6:00 a.m. on Monday, March 11, 2001 to use Pier 1 and shall automatically expire at 6:00 p.m. on Monday, September 10, 2001.









**Minutes of Meeting  
Treasure Island Development Authority  
April 11, 2001**

Call to Order: 2:00 PM

Roll Call Present: Gerald Green  
Susan Po-Rufino  
James Morales  
William Fazande

Excused: John Elberling  
Doug Wong

2. Approval of Minutes: The minutes of March 29, 2001 were approved unanimously.
3. Communications: London Breed, Commission Secretary, reported that there were no communications.
4. Director's Report: A full report will be given at the May 9, 2001 meeting.
5. General Public Comment: None
6. Ongoing Business: None
7. Resolution approving a sublease, as amended, with the Sheriff's Department for the Brig facility.

Stephen Proud, Director of Development, reports that on October 11, 2001, the Authority approved a sublease with the Sheriff's Department for the Brig Facility to be used as a training facility and perhaps for overflow jail facilities if the Authority is notified in advance. On January 29, 2001, the sublease was introduced to the Board of Supervisors and then referred to the Finance Committee for consideration. The Finance Committee approved the sublease and the full Board of Supervisors approved the sublease on Monday, April 9, 2001. Four amendments to the sublease suggested by the Board of Supervisors are before you today for approval. They are: correct the resolution to reflect a change in the term of the sublease from 5 years to 2 years; change the definition for violent offenders to the statutory definition as set forth in the penal code; change the termination notification from 1 year to 30 days; and prorate the utility and landscaping costs for the days the SFSD doesn't have access to the facility.

Mr. Fazande moved approval. Po-Rufino seconded. Approved 4-0

8. Resolution authorizing the Executive Director to execute a contract with Rubicon Enterprises, Inc., a member organization of the Treasure Island Homeless Development Initiative, to provide landscaping and ground maintenance service for an amount not to exceed \$600,000.

Eila Arbuckle, Finance Manager, questions the amount but reports that Rubicon has been providing the services even when the Navy was in charge. Staff has negotiated a new contract with Rubicon to meet some of the City's goals for a reduction of water consumption for irrigation and to minimize the expense. The estimated cost of this contract is \$50,000 per month and an extra \$180,000 is in the budget for adjunct landscaping and ground maintenance services to be used as needed. Ms. Arbuckle states that the correct amount of the contract is \$780,000 and the resolution should be corrected to reflect this.

Michael Cohen, City Attorney, states that the resolution says \$780,000 but the calendar is off. Since the purpose of the Sunshine Ordinance is to give people adequate notice for comments, the difference is small enough that adequate notice has been provided for anyone interested in commenting on this item.

Steve Jeffery, of Rubicon, reports they have been doing the landscaping of Treasure Island for the past three years. Rubicon has hired 39 people from several TIHDI member organizations such as Swords to Plowshares, Toolworks, Goodwill, Skillsense, Walden House, etc

Bruce Franks, TIHDI Job Broker, reports that Rubicon is doing a good job and all of their hires come through the TIHDI Job Brokers.

Mr. Green asked does Rubicon service the entire base. Ms. Arbuckle states this service is only for areas not leased to John Stewart Company or under Coast Guard control. It is for areas leased from the Navy and those covered under the Cooperative Agreement.

Ms. Arbuckle states that the smaller lessees pay us and we pay Rubicon but the larger tenants pay directly, it is in their subleases. Both islands are mapped out in landscaping parcels, which are numbered reflecting different levels of service and whether or not they pay directly.

Mr. Morales moved approval. Mr. Fazande seconded. Approved 4-0

9. Resolution authorizing the Executive Director to extend the sublease with Mr. Rex Liu for the Photo Booth on a month-to-month basis not to exceed one year.

London Breed, Development Specialist reports that the resolution authorizes the Executive Director to extend the sublease with Mr. Liu for the Photo Booth at the entrance to the Island for an additional one-year term under the same conditions as the original sublease dated October 15, 1999. The Photo Booth is used to sell film, cameras and souvenirs and for no other purpose. Staff recommends approval. Extensions beyond April 15, 2001 would require additional Authority approval.

Mr. Fazande moved approval. Mr. Morales seconded. Approved 4-0

10. A report on the Amendment to the John Stewart sublease to include licensed health care professionals in the San Francisco Essential Preference Group. This is a discussion item only.

Mr. Proud reports that at the last meeting, the Authority passed a resolution authorizing staff to move forward with an amendment to the John Stewart Company sublease to add to the category of essential licensed health care professionals. The Authority requested staff to come back and address three separate issues.

A census count on how many people are utilizing the different preference categories on Treasure Island. As of last week, the John Stewart Company reports that the TI essential and the SF essential categories represent 24 of the total number of units of 609. This category has a right of first refusal for up to 35% of the units. They are dramatically under that 35% allocation. The university consortium is taking up 94 units, the San Francisco workers and residents have 409, the Bay Area workers or residents have 39 units and the general public picked up the last 43 units. This shows there aren't a lot of people utilizing that preference group. By amending it to include licensed health care professionals we would not be expanding it significantly.

Mr. Green asked about the process for renting and for the waiting list for the essential category. Mr. Proud replied that if someone fell into that preference category they would move to the top of the list and as units became available they took the list in the order they came. The City Attorney's interpretation was that the units that were available would be allocated based on the way the preferences categories were, so if 10 units became available, 35% of the units went to the SF essentials category, 25% to the university consortium and 40% to the rest of the remaining groups. In practice the John Stewart Company takes those people that fall into the preference category, moves them to the top of the list and the units are taken as available. We seek your direction to either continue that process or to divide the units that become available each month among the different categories.

Mr. Green asked about the definition of licensed health care professional. Mr. Proud replied that it would include lab/medical technologists, nurse case managers/RN's, nurse assistants, LVN's, staff nurses or technicians, pharmacists, pharmacist technicians, physical therapists, radiology technologists/therapists, ultrasound technicians and respiratory care practitioners. The Hospital Council will work with the John Stewart Company to screen applicants and verify eligibility.

Mr. Cohen states that the process needs to work on a balanced basis, so that if 10 units became available, instead of all 10 going to the preference category until it's filled, 3 or 4 would go to that category and the rest would go to either the general public or the university consortium.

Ms. Conroy expresses concern of the fairness of people being able to cut in front of people who have already been waiting on the list.

Discussion follows regarding a balanced approach. The action will be carried out on a balanced approach.

11. A resolution approving the budget of the Treasure Island Development Authority for FY 2001-2002, and authorizing the Executive Director to submit the proposed budget to the Mayor of the City and County of San Francisco for further review and inclusion in the City's FY2001-2002 budget.

Ms. Arbuckle states that the Authority's FY 02 budget is similar to the previous two budgets. We anticipate significant increases in revenues from housing. The special percentage rent component of the housing lease ended in November of 2000, so we're already receiving more housing revenue than we had in the past. Ms. Arbuckle reports on another factor affecting the budget and that is the anticipation that the end of FY 01 will convey TI to the Authority through an economic development conveyance. Under the terms, as we understand them, of an EDC conveyance, we will not be allowed to use the revenue earned from the assets the Navy turns over to us to fund city services. We can fund infrastructure and capital projects. The Authority is obligated to pay for services such as Fire Suppression, Police and certain DPW expenses. Our budget projects paying these expenses for the first half of the year. These are unallocated anticipated revenues of 1.4 million. No recommended allocation has been made because it is not clear when the conveyance will happen and how much we will have to pay for city services. When we know for certain, we will bring forth to you another budget to make staff recommendation. Funds would be used for ADA compliance and other infrastructure improvements. Our personnel budget anticipates 12 FTE's, no change from the current year. Our operations are 2.1 million in services from non-City departments with about 1.6 million going to outside contractors such as Rubicon, an allocation for monitoring environmental remediation services, contracts to finish redevelopment plan, and the EIR and THDI support. We will continue to pay DPW for building maintenance. Ms. Arbuckle reports the main amount of our funding comes from the John Stewart leases. We anticipate 4.8 million from the housing lease and 1.4 million from other facility rentals and special events.

Mr. Morales asked what accounts for the negative \$235,000 under commercial revenues for FY 02.

Ms. Arbuckle states that just represents the change between FY 01 and FY 02. We had anticipated renting Bldg. 3 in FY 01, which we did not, so we cut our revenue estimate for next year based on what happened this year.

Mr. Green asked if the process to use the 1.4 million would be as a supplemental budget.

Ms. Arbuckle states yeas and then we would have to come back to you to ask permission to allocate it and then to the Board of Supervisors for their permission for spending authority.

Ms. Po-Rufino moved approval. Mr. Morales seconded. Approved 4-0

12. Resolution authorizing the Executive Director to accept and enter into a grant agreement for \$879,000 from the Federal Highway Administration Ferry Boat Discretionary fund for the planning and construction of a temporary ferry terminal on Treasure Island.

Joan Rummelsburg, Director of Special Projects, states that late last year we were notified by CalTrans that \$879,000 was earmarked for construction of a temporary ferry terminal on TI. The focus of this resolution is about obligating the funds, approving the project and accepting the funds. The problem is obligating the

money. The project consists of construction of an accessible ADA gangway and other items that provide safe passage for passengers, including wind shelter, sound system and safety lighting. The Authority is required to provide \$121,000 in matching funds, which we decided to do so from the budget you just approved. In order to obligate the funds in a timely way, we have to show sufficient progress. CalTrans recommended we go through Muni as a funding agent to do this for us. Muni will probably require 5% of the grant fund to do record keeping and to be a liaison for us to the FTA.

Mr. Green asked what is the time frame for construction completion. Ms. Rummelsburg states that there are a number of things that have to be done, i.e., planning the terminal. Muni has to get it in the Federal Transportation Improvement Plan before they can start their process and that has already begun. With the delay and construction we would probably start next spring.

Mr. Green asked at this point, there's not an obligation to commence or finish construction.

Ms. Rummelsburg states that one of the reasons we are going through Muni and the FTA is that it stops the clock to get the essential studies done and the environmental clearance and engineering drawings. By going through Muni and the FTA there is no federal requirement to start or complete the project by a certain date or lose the funds. Had we applied directly we would need to spend and obligate the money by September.

Mr. Green asked are the planning and engineering studies on the time clock too.

Ms. Rummelsburg states that Muni and the FTA will establish a time clock for us. We will work with Muni and the FTA to stop the clock before September 30, the end of this federal fiscal year.

Terry Shore, Blue Water Network, a national environmental organization based in San Francisco, recommends the solar sailor, which runs on sun and wind, as opposed to the polluting diesel ferries. She reports that the fast, high-speed diesel ferries produce 4 to 9 times the pollution per passenger mile as a diesel bus or car. She would like an opportunity to present a full presentation in the future to discuss these issues.

Ruth Gravanis states she is happy to see the move towards alternative transportation instead of private auto.

Mr. Green moved approval. Ms. Po-Rufino seconded. Approved 4-0

Meeting adjourn 2:52 PM in honor of Deputy Director/Facilities Manager Robert Mahoney of the Treasure Island Development Authority who passed away on April 4, 2001



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Minutes of Meeting  
Treasure Island Development Authority  
May 9, 2001

## DOCUMENTS DEPT.

1. Call to Order: 1:06 PM

SEP 18 2001

Roll Call: Present: John Elberling  
William Fazande  
James Morales  
Susan Po-Rufino  
Doug Wong  
Gerald Green (1:10 PM)

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PUBLIC LIBRARY

2. Approval of Minutes: The minutes of April 11, 2001 were approved unanimously.

3. Communications: London Breed, Commission Secretary, reported there were no communications.

4. Director's Report given by Executive Director Annemarie Conroy.

· Environmental Cleanup - Ms. Conroy reported there have been some issues with the finalization of the amended FOSL's of some units that affect both TIHDI and the John Stewart Company. With help from Senator Feinstein and Congresswoman Nancy Pelosi, responses were received from the Acting Undersecretary of the Navy, Duncan Holiday, who is in charge of all installations, both active and closing. Secretary Cassidy's position was eliminated. They are now acting on our request to release these units.

· Short Term Leases - There are no new short-term leases. The Fire Training sublease was introduced at the Board of Supervisors on April 16.

· Bay Bridge - The project office continues to have ongoing discussions with Caltrans regarding mitigation.

· Community Issues - The Sailing Center had an opening day on the bay on April 28, 2001. The event was very successful and Ms. Conarroe has done a tremendous job providing sailing classes for disadvantaged youth. The project office has turned over our list of potential operators for a convenience store to the Job Corps.

· Citizen Advisory Board - The April meeting included a presentation of the Sunshine Ordinance by Deputy City Attorney Katherine Barnes. A presentation regarding the move of the Police Academy to Treasure Island was postponed to a later date. A brief update on the status of the Restoration Advisory Board was given by RAB & CAB member Nathan Brennan. The Subcommittee on Planning and Development met on May 2, 2001 to review responses to the RFQ, and a presentation on wetlands by Ruth Gravanis is expected on the May agenda.

· TIHDI - The TIHDI fundraiser was a great success.

· Financial Report - The budget is on track with both revenues and expenses.

· Legislation/Hearings - The Fire and Police leases are pending at the Board of Supervisors.

5. General Public Comment: None

6. Ongoing Business: None.

7. Resolution approving a sublease retroactive to July 1, 2000 with the SFPD for use of Buildings 402, 461, 462, 463 and 497 for training activities and the proposed location for a regional training facility for the Police Academy. London Breed, Development Specialist, states that the proposed facility will include training of basic recruit officers and continuing professional education for law enforcement personnel. On July 21, 2000, the Authority received a final draft of the appraisal report from Clifford and Associates that assessed the value of the property 1.2 million dollars per year, not including building 463 which was requested after the proposal was made. The police have occupied the facility since July 2000 after funds were budgeted by the City and County of San Francisco for FY 00-01. The sublease is retroactive because the Authority has been negotiating a sublease since last year with the Police Department. Annual rent will be the assessed value of 1.2 million per year in addition to CAM charges of \$3,170/mo., and landscaping charges of \$2,600/mo. The term will be 2 years with termination option by either party with 30 days notice. Staff recommends approval of the sublease retroactive to July 1, 2000. Mr. Green asked when are we in finalizing the public access hours to the premises. Ms. Breed replied that staff



proposes the access hours be Monday through Friday, 4-10 p.m. and Saturday and Sunday from 8-5 p.m. The police department trains Monday-Friday up to 6 p.m. She states it will have to be worked out to make it available to TI residents.

Mr. Green asked has there been public access during the time the police have been occupying the premises since July. Ms. Breed replied that there has not been access to the public due to ongoing construction on the gym. The facility has to be brought up to seismic and ADA codes before being open to the public.

Annemarie Conroy reports we need to make an amendment to the sublease lease that the term is 18 months, not 2 years. So there are approximately 6 months left on the lease. Ms. Conroy adds we were very clear from the beginning that the gym be open to the public.

Mr. Elberling asked could someone comment on the long term plans and level of investment.

William Welch, Deputy Chief of the Administrative Bureau of the SFPD, states that it is the police department's intent and long-range goal to establish a regional police academy, which would include the Sheriff's Department and the SFPD as a regional facility on TI. The Police Officer's Standards and Training for the State of California, which oversees all licensing of police departments in the state including the training process, has divided the state into 5 regions. San Francisco is one along with parts of San Mateo and Marin Counties. We are looking to create a regional academy that would service that part of the bay area. As for the gymnasium, we have had discussions about it with TIDA. Generally it is available all day on weekends and after 6 on weekdays.

Mr. Elberling asks if the gym and Ship Shape are essential to the academy. Deputy Chief Welch replies that they are critical, as police training is very physical.

Mr. Green asked how many officers would be using the facility at any given time once it's up and running.

Deputy Chief Welch states class size is held at about 44 officers and probably run 6 classes.

Mr. Elberling asked how long would the police department like to use the facilities.

Deputy Chief Welch says the academy was previously located for a few years on TI in the 1970s. Our long-range goal would be for it to be a permanent facility.

Mr. Morales replied that the gym is on the development site for the reuse of TI, right in the middle of the island. You're not envisioning using it for more than the interim period because once development begins, the gym probably will not be there.

Deputy Chief Welch states that in that case they would have to build something else or find a different building.

Arnold Levine, TI CAB, request the Authority to continue this decision until next month's meeting so community groups and TI CAB can review the implications of this issue and present official views to TIDA for consideration.

Mr. Robert Lowell, Board Member of the Diamond Heights Community Association is concerned about the cost of the facility as opposed to the one already owned by the City.

Irene Speng, Diamond Heights resident, is concerned with the site itself. She questions the likelihood of fixing the facilities for 1 million. She toured the premises and there is an enormous amount of work to be done in order for anyone to work there.

Leanne Furth states the current facility already is a regional academy attended by people from all over the area. It's fully utilized and there is plenty of space to expand.

Ruth Gravanis states one of her interests in the island is sustainable development and use and trying to find uses that are consistent with the draft Base Reuse Plan such as drawing people to the island that would not use private automobiles. The island would be covered in the event of a disaster since we already have police, fire & paramedic services. She does not believe any more money should be spent.

Ms. Conroy stated that we need a lease to be paid. We need to move forward with this today so it can get to the Finance Committee before they go into budget season. This is our only window of opportunity to get it through here and to the Committee. We can discuss it at the Finance Committee as they accept public comment. The eastern portion of the island that are designated for the Police Dept & Fire Dept, like the Job Corps, is not part of the RFQ.

Mr. Morales replied that the CAB needs to have input and the fact that the exhibits are missing is reason to continue the decision. We need to make a policy decision to take Bldg. 402 and 497 out of the RFQ and designate them for the academy first, then get on with the lease. I propose a continuance because I wouldn't feel comfortable having 402 & 497 included in the lease because the inclusion of those buildings is a long-term policy decision.

Mr. Elberling replied that this is just a six-month lease, until the end of the year. I consider this a temporary arrangement and the Police Department has been there since July of 2001. We have to get paid. As for the long-term, if it's a key parcel, the developer is going to pay the cost of moving it.

Mr. Green moved to amend the term of the sublease from 2 years to 18 months. Mr. Fazande Seconded. Approved 5-1.



Mr. Fazande moved approval as amended. Ms. Po-Rufino seconded. Approved 5-1

8. A resolution approving an interim sublease with the Treasure Island Yacht Club for Building 298. Marianne Conarroe states that last September the Authority authorized the executive director to enter into sole source negotiations with the TI Yacht Club for an interim sublease of Bldg. 298. Negotiations have been completed and the sublease is ready for your approval. As part of the operational closure of the base, the TI Yacht Club was given an eviction notice to vacate the Yacht Club House, which was then Bldg. 183. They have had a presence on the island since the mid 1960s and since its departure it has been holding its meetings at various locations around the bay area, primarily Oakland and Berkeley yacht clubs. The building has been inspected to address code requirements and those have been incorporated into the lease. Members have had discussions with Treasure Island Enterprises regarding expansion of the Marina and the possibility of sharing the Marina parking lot. The sublease provides that it would automatically terminate if the Authority enters into a lease for the development or redevelopment of the Marina, which includes Bldg. 298. This sublease would expire in June 20, 2002 with 5 one-year options to extend the term. Base rent starts out at \$450 per month for the first term, \$650 for the second term, \$950 for the third, etc. Staff recommends approval. The commodore of the Yacht Club is here if you have any questions.

Commodore Harland Van Wye replied that having the yacht club back at Clipper Cover would be a great benefit to the City.

Mr. Green moved approval. Mr. Fazande seconded. Approved 6-0

9. Resolution approving the extension of a use permit with California Engineering Contractors, Inc./Modern Continental for use of Pier 1 for an additional six months.

Marianne Conarroe states replied that CEC uses a small portion of Pier 1 to transport employees, by tugboat, work on the anchors near the water of the western span of the Bay Bridge. Previously, the workers would congregate at the lay down space and then be transported over the bridge to Pier 50 where WestStar tug services would transport them to the bridge. Transporting directly from Treasure Island saves a significant amount of time. They have been good tenants for the last six months and they say their work will go on another six months or more. Staff recommends approval of the six-month extension.

Mr. Green moved approval. Ms. Po-Rufino seconded. Approved 6-0

10. Meeting adjourned 2:17 PM

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